be added to the list as § 91.14 (a)(4) and the present § 91.14(a)(4) through § 91.14(a)(12) will be renumbered § 91.14(a)(5) through § 91.14(a)(13), respectively.

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock and livestock products, Transportation, Humane animal handling.

PART 91—INSPECTION AND HANDLING OF LIFESTOCK FOR EXPORTATION

Accordingly, Part 91, Title 9, Code of Federal Regulations, is amended in the following respect.

In § 91.14(a), paragraphs (4) through (12) are redesignated as (5) through (13) and a new paragraph (4) is added to read:

§ 91.14 Ports of embarkation and export inspection facilities.

(a) * * *

(4) *Indiana.*

(i) Indianapolis—airport only.

(A) Indiana Livestock Export Inspection Facility, Indianapolis International Airport, 7151 Powers Drive, Indianapolis, IN 46241, (317) 248-9211.

* * * * *

(Sec. 10, 26 Stat. 417; secs. 4, 5, 23 Stat. 32, as amended; sec. 1, 32 Stat. 791, as amended; sec. 3, 76 Stat. 130; sec. 11, 76 Stat. 132; secs. 12, 13, 14, 18, 34 Stat. 1263, as amended; secs. 1, 2, 26 Stat. 833, as amended; (21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618; 46 U.S.C 466a, 466b); 7 CFR 2.17, 2.51, 371.2(b))

Done at Washington, D.C., this 15th day of December 1982.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 82-34557 Filed 12-21-82; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 55

Partial Regionalization of the Operator Licensing Function

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The NRC is amending its regulations relating to operator licenses to provide information concerning the further implementation of NRC's regional licensing program. This amendment states that authority and responsibility for the issuance of licenses for operators and senior operators of licensed nuclear reactors located in Regions II and III have been assigned and delegated to the Regional Administrators of Regions II and III and specifies where applicants for these licenses should obtain necessary forms and file applications. This amendment is necessary to inform licensees, operators, applicants, and the public of current NRC organization and practice.

EFFECTIVE DATE: December 17, 1982.

FOR FURTHER INFORMATION CONTACT: Don H. Beckhan, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; Telephone (301) 492-4868.

SUPPLEMENTARY INFORMATION: In further implementation of its regionalization program, the Commission has delegated to the Regional Administrators of Regions II and III authority and responsibility pursuant to the regulations in 10 CFR Part 55 to issue and renew licenses for operators and senior operators of nuclear reactors licensed under 10 CFR Part 50 and located in those regions.

The general delegation of authority for the Regional Administrators is described in NRC Manual Chapter 0128. Pursuant to that general delegation of authority, the Executive Director for Operations and the Director of Nuclear Reactor Regulation assigned and delegated to the Regional Administrators for Regions II and III the responsibility under 10 CFR Part 55 for licensing operators of nuclear reactors licensed under 10 CFR Part 50 and located in Regions II and III. Copies of the delegations of authority have been placed in the Commission's public document room at 1717 H Street, NW., Washington, D.C., and at the Region II Office, 101 Marietta Street, Suite 3100, Atlanta, Georgia 30303, and the Region III Office, 799 Roosevelt Road, Glen Ellyn, Illinois 60137, where they are available for inspection and copying by the public.

The revised regulations, which are intended to inform licensees and the public of current NRC practices and organization, specify where applications for operator and senior operator licenses shall be filed, where reports and communications shall be submitted and where needed information and forms may be obtained.

Since the amendments to Part 55 are nonsubstantive and relate to matters of agency organization and procedure, the notice and comment procedures of the Administrative Procedure Act (5 U.S.C. 553) do not apply and good cause exists for making the amendments effective on December 17, 1982, without the customary 30-day waiting period.

Paperwork Reduction Act Statement

This rule contains no new or amended requirements for recordkeeping, reporting, plans or procedures, applications, or any other type of information collection subject to the Paperwork Reduction Act of 1980, Pub. L. 96-511.

List of Subjects in 10 CFR Part 55

Manpower training programs, Nuclear power plants and reactors, Penalty, Reporting requirements.

Under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the following amendments to 10 CFR Part 55 are published as a document subject to codification.

PART 55—OPERATORS' LICENSES

1. The authority citation for Part 55 is revised to read as follows:

Authority: Secs. 107, 161, 68 Stat. 939, 948, as amended (42 U.S.C. 2137, 2201); secs. 201, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Section 55.40 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 55.3 and 55.31(a)-(d) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and § 55.41 is issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 55.5 is revised to read as follows:

§ 55.5 Communications.

(a) Except as provided under a regional licensing program identified in paragraph (b) of this section, any communication or report concerning the regulations in this part and any application filed under these regulations may be submitted to the Commission as follows:

(1) By mail addressed to—Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) By delivery in person to the Commission offices at—

(i) 1717 H St. NW., Washington, D.C. or

(ii) 7920 Norfolk Avenue, Bethesda, Maryland.

(b)(1) The Commission has delegated to the Regional Administrators of Regions II and III authority and responsibility pursuant to the regulations in this part for the issuance and renewal of licenses for operators and senior operators of nuclear reactors licensed under 10 CFR Part 50 and located in these regions.

(2) Any application filed under the regulations in this part involving a nuclear reactor licensed under 10 CFR Part 50 and located in Region II and any inquiry, communication, information or report relating to matters subject to the regulations in this part and involving a nuclear reactor licensed under 10 CFR Part 50 and located in Region II must be submitted by mail or in person to the Regional Administrator, Region II, U.S. Nuclear Regulatory Commission, 101 Marietta Street, Suite 3100, Atlanta, Georgia 30303. The Regional Administrator of Region II, or his designee, will transmit to the Director of Nuclear Reactor Regulation any matter which is not within the scope of the Regional Administrator's delegated authority.

(3) Any application filed under the regulations in this part involving a nuclear reactor licensed under 10 CFR Part 50 and located in Region III, and any inquiry, communication, information or report relating to matters subject to the regulations in this part and involving a nuclear reactor licensed under 10 CFR Part 50 and located in Region III, must be submitted by mail or in person to the Regional Administrator, Region III, U.S. Nuclear Regulatory Commission, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. The Regional Administrator of Region III, or his designee, will transmit to the Director of Nuclear Reactor Regulation any matter which is not within the scope of the Regional Administrator's delegated authority.

3. In Section 55.10, paragraph (a) is revised to read as follows:

§ 55.10 Contents of applications.

(a) As provided in § 55.5, each application for a license must be filed with the Director of Nuclear Reactor Regulation, the Director of Nuclear Material Safety and Safeguards, or a designated Regional Administrator, as appropriate. The application must be submitted in triplicate, except for the report of medical examination, and must contain the following information:

(1) The full name, citizenship, age, address, and present employment of the applicant;

(2) The education and pertinent experience of the applicant, including detailed information on the extent and nature of responsibility;

(3) Serial numbers of any operator and senior operator license issued by the Commission to the applicant and the expiration date of each;

(4) The specific facility for which the applicant seeks an operator or senior operator license;

(5) The written request of an authorized representative of the facility licensee that the operating test be administered to the applicant of the facility.

(6) Evidence that the applicant has learned to operate the controls in a competent and safe manner and has need for an operator or a senior operator license in the performance of his duties. The Commission may accept as proof of this a certification of an authorized representative of the facility licensee where the applicant's services will be utilized. This certification must include details on courses of instruction administered by the facility licensee, number of course hours, number of hours of training and nature of training received at the facility, and for reactors, the startup and shutdown experience received.

(7) A report of a medical examination by a licensed medical practitioner, in one copy in the form prescribed in § 55.60.

* * * * *

4. Section 55.41 is revised to read as follows:

§ 55.41 Notification of disability.

The licensee shall notify the Commission of the occurrence of any disability referred to in § 55.11(a)(1) that occurs after the submission of the licensee's medical examination form. As provided in § 55.5, the licensee shall notify the Director of Nuclear Reactor Regulation, the Director of Nuclear Material Safety and Safeguards, or the designated Regional Administrator, as appropriate, within 15 days after the occurrence of the disability.

5. In § 55.60, paragraph (b) and the note to the section are revised to read as follows:

§ 55.60 Examination form.

* * * * *

(b) The examining physician shall complete and sign Form NRC-396, and, as provided in § 55.5, shall mail the completed form to the Director of Nuclear Reactor Regulation, the Director of Nuclear Material Safety and Safeguards, or the designated Regional Administrator, as appropriate.

Note:—Copies of Form NRC-396 may be obtained by writing the Commission at the appropriate address provided in § 55.5.

Dated at Bethesda, Maryland, this 8th day of December 1982.

For the Nuclear Regulatory Commission.

William J. Dircks,

Excutive Director for Operations.

[FR Doc. 82-34702 Filed 12-21-82; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 523, 541, 543, 544, 545, 546, 547, 549, 552, 561, 563, 563b, 564, 565, 569a, 575, 576, 577, 578, 583, and 584

[No. 82-791]

Charters and Bylaws Available to Federal Associations, and Related Amendments; Processing of Applications

Dated: December 8, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; request for comments.

SUMMARY: In order to implement statutory revisions contained in Public Law 97-320, the Garn-St Germain Depository Institutions Act of 1982, the Federal Home Loan Bank Board has amended its regulations governing federal association charters. Under the amendments, all federal associations (or those seeking to convert to federal associations) may elect to be chartered either as federal savings and loan associations or as federal savings banks. In addition, federal charters, whether in the stock or mutual form, may be obtained by state-chartered savings banks without the requirement that they surrender their Federal Deposit Insurance Corporation ("FDIC") insurance in favor of insurance of accounts from the Federal Savings and Loan Insurance Corporation ("FSLIC"). No charter already issued will have to be amended if an institution is content with the status quo; any amendment will be purely a business decision for an institution. Because of the addition of FDIC-insured federal savings banks to the list of Board regulatees, numerous technical and conforming amendments have been made, particularly in the merger area. This, in large degree, has been required as a result of the fact that many regulations designed to apply to federal associations are cast in terms of whether an institution is an "insured institution," i.e., one the accounts of which are insured by the FSLIC.

As an additional matter, the Board also is consolidating its application process for all de novo federal mutual associations. The amendments will combine the Permission to Organize application and the Petition for Charter application. The Board will propose de novo federal stock institution application regulations in the near future.

These changes should prove extremely beneficial to thrift

institutions. A wider range of thrifts will have access to a greater variety of federal charter forms, and to the increased empowerments and flexibility that accompany those charters. Moreover, the process of applying to organize a federal association will be simplified and streamlined, benefiting those seeking to enter the thrift industry.

DATES: Effective December 15, 1982.

Comments must be received by February 22, 1983

ADDRESS: Send comments to Director, Information Services Section, Office of Communications, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Randall H. McFarlane, Legislative Counsel, Office of General Counsel (202–377–6449), David A. Permut, Attorney, Office of General Counsel (202–377–6982), Donna K. Ralston, Attorney, Office of General Counsel (202–377–6421), or K. Diane Boyle, Program Analysis Development Division Director, Office of District Banks (202–377–6720).

SUPPLEMENTARY INFORMATION:

Charters Available to Federal Associations and Related Amendments

A. Overview

On October 15, 1982, the Garn-St Germain Depository Institutions Act of 1982 ("Act"), Pub. L. 97–320, was enacted. A major thrust of the Act is to broaden greatly the chartering and organizational options open to federal associations. Previously, federal associations could be organized on a de novo basis only as federal mutual savings and loan associations. The Board could charter federal savings banks, but only as mutual institutions with accounts insured by the FSLIC, and only as a direct consequence of a conversion from a state-chartered mutual savings bank. The Act not only permits de novo organization of federal savings banks, it allows any current or future federal association to be chartered either as a federal savings and loan association or a federal savings bank. Furthermore, federal charters, whether in the stock or mutual form, may be obtained by state-chartered savings banks without the requirement that they surrender their FDIC insurance in favor of FSLIC insurance of accounts. The Act also considerably broadens the statutory purposes of federal associations; prior to the passage of the Act, the basic purpose of a federal association was to act as a place for the investment of funds and as a source of investment for housing. The statutory purposes of federal associations now include the financing of all goods and services.

The Board has determined to respond to these changes basically by creating four new charter forms, which will be accessible to all federal associations or those institutions qualifying to convert to federal associations. Any institution wishing to organize as, or convert to, a federal mutual savings bank will seek a Charter B (Revised) instead of a Charter B. An association desirous of organizing as, or converting to, a federal stock savings bank will elect a Charter T. Those that wish to organize as, or convert to, federal mutual savings and loan associations, will have to obtain a Charter N (Revised) rather than a Charter N, or a Charter L rather than a Charter K (Revised). All the new mutual charters contain conforming changes to reflect, as a result of the Act, the broader purposes of federal associations. Charter T follows the very broadly phrased language of Charter S (for federal stock savings and loan associations). Current holders of charters will not have to amend their charters or seek new charters unless they perceive a business or other benefit, such as the ability to operate as a federal savings bank. In the interest of rapid implementation of the Act, the Board has not attempted to make extensive changes in its previous charter forms, although it believes such changes may be appropriate. The Board intends, however, to examine the need for a broad restructuring of its charter forms in the near future, and has instructed its staff to develop proposals on this subject.

Because the Act provides, for the first time, for Board regulation of FDIC-insured institutions, it has been necessary to make a large number of amendments to prior regulations to permit these institutions to fit rationally into a regulatory scheme largely keyed to a description of regulatees as "insured institutions," i.e., institutions the accounts of which are insured by the FSLIC. Among the more important of these were amendments adjusting the Board's merger regulations to accommodate the presence of FDIC-insured organizations.

B. Federal Mutual Savings Banks

Previous regulations governing federal mutual savings banks ("FMSBs") were found in 12 CFR Parts 575, 576, 577 and 578. Given the wider availability of the FMSB charter option, previously open only to converted state mutual savings banks, the removal by the Act of distinctions between FMSBs and other federal associations in such areas as branching and discrimination requirements, and the substantial changes made regarding grandfathering, it was determined to repeal those Parts, after making appropriate regulatory adjustments elsewhere in 12 CFR Part 544. Thus, 12 CFR 544.1(c) will contain Charter B (Rev.), the form that will be used by new FMSBs. That form will be virtually the same as the former Charter B, basically containing changes intended to conform to the broadened purposes of federal associations, the availability of authority to offer demand accounts as well as savings accounts, the repeal of former restrictions on equity, corporate bond and consumer loan investments, and the existence of FDIC-insured FMSBs not subject to FSLIC insurance reserve requirements. FMSBs, except as specifically noted in the regulations or their charters, will have the same powers and be subject to the same requirements as other federal associations.

C. Federal Stock Savings Banks

Federal associations (whether FSLIC-insured or FDIC-insured) wishing to operate as federal stock savings banks will do so under new Charter T, found at 12 CFR 552.3. Charter T essentially is Charter S with the phrase "Charter T" substituted for "Charter S," the words "Federal Savings Bank" substituted for the words "Federal Savings and Loan Association," and the word "bank" substituted for the word "association". Charter T associations will be regulated, except as specifically provided in their charters or by regulation, on the same basis as other federal associations. Any association in the mutual form must convert to the stock form pursuant to the provisions of 12 CFR Part 563b in order to obtain a Charter T.

D. Federal Savings and Loan Associations

Charters for new mutual-form federal savings and loan associations previously were issued either as Charter N, under 12 CFR 544.1(a), or as Charter K (rev.), under § 544.1(b). Charters issued under those provisions are being modified slightly to reflect changes resulting from the Act, and are redesignated as Charter N (rev.) and Charter L, respectively. The changes involve restating the purpose of an association as being to pursue the lawful objectives of a federal association, rather than simply to promote thrift and economical home financing, and conforming the Charters, previously oriented only to holders of savings accounts, to reflect the existence of demand accounts.

E. Adoption by Federal Associations of New Federal Charters

Large numbers of federal associations have expressed interest in converting to federal savings banks. Under these amendments, a federal savings and loan association may become a federal savings bank (and vice versa) only in connection with a change of charter under 12 CFR 544.3. This requirement is contained in 12 CFR 543.1(b), dealing with title changes. Section 544.3, which previously dealt only with changes to Charter K (rev.) from Charter N, now governs all situations where a federal mutual association seeks a new form of federal mutual charter, or a federal stock association seeks a new form of federal stock charter. The simple procedure of the old regulation, however, is preserved: when notified by an institution's board that a majority of the institution's members or stockholders have approved adoption of a new form of federal charter, the Board will issue the charter in the form desired, upon approval of any change sought in name or location. Approval of the charter and other changes, however, now may be made by the Principal Supervisory Agent.

F. Mergers

Previously, the merger regulations for federal mutual associations, found at 12 CFR Part 546, and for federal stock associations, found at 12 CFR Part 552, contemplated mergers only with FSLIC-insured institutions. With the provision of authority to charter FDIC-insured federal associations, it has been necessary to make certain regulatory adjustments. Accordingly, 12 CFR 546.1(a) is amended to allow: Under subparagraph (1), mergers between FSLIC-insured federal associations and other FSLIC-insured institutions, as per prior regulation; under subparagraph (2), mergers between FDIC-insured federal associations and other FDIC-insured institutions, provided laws applicable to the non-federal associations are complied with (for instance, the provisions of the Bank Merger Act (12 U.S.C. 1828)); and under subparagraph (3), mergers between FDIC-insured federal associations and FSLIC-insured institutions, subject to prior FDIC approval and compliance with such law as may be applicable to the non-federal associations involved. Other amendments include a revision of 12 CFR 546.1(a) to expand the definition of "association" to include commercial banks eligible to merge with a federal association, and a revision of 12 CFR 546.2(g), concerning the law governing effective dates of mergers, to cover the possibility of resulting associations other than federal associations that would not be subject to state law requirements.

Similar changes are made to the federal stock association merger regulations in 12 CFR 552.13. Section 552.13(c)(1), which previously limited merger partners to institutions insured by the FSLIC, is amended to stipulate that, where a transaction involves an FDIC-insured federal association, the constituent associations may be either FDIC-insured or FSLIC-insured (including interim federal and interim state associations). Another change in § 552.13(b)(1) provides an additional exception to the rule that a mutual association must survive its merger with a Charter S or T association. This amendment incorporates the new exception into § 552.13(c)(1) in conformity with an amendment to § 563b.10 of the Rules and Regulations for Insurance of Accounts (12 CFR 563b.10) which authorized, on a test-case basis, the filing of applications for the non-supervisory merger of insured mutual institutions into insured stock institutions. (See Board Res. No. 82-390; 47 FR 24252, June 4, 1982.) Section 552.13(b)(1) is revised to include commercial and industrial banks within the definition of association. In addition, the provision governing Board approval, § 552.13(d), is amended, as required by statute, to require prior FDIC approval of mergers of FDIC-insured federal associations with entities not so insured, and § 552.13(e), concerning board-of-director approval, is amended to acknowledge that state law may not always be determinative with respect to what procedure a board must observe to approve a merger. Finally, § 552.13(l), dealing with effective dates of mergers, is revised to recognize that state law may not be the proper source of authority as to what date is proper where a resulting association is not a federal association.

G. Delegation of Authority Regarding State Stock to Federal Stock Conversions

On October 29, 1981, by Resolution No. 81-651 (46 FR 54722, November 4, 1981), the Board amended the Rules and Regulations for the Federal Savings and Loan System to provide in § 552.2-1 (12 CFR 552-2.1) for delegation of authority to the Principal Supervisory Agent of the appropriate Federal Home Loan Bank to approve applications for conversion of state-chartered stock savings and loan institutions to federally-chartered stock savings and loan institutions.

Based on its experience with conversion applications processed pursuant to Section 552-2.1, the Board has found that applications for conversion of state-chartered stock savings and loan institutions to federally-chartered stock savings and loan institutions for supervisory reasons may present significant legal issues or policy considerations requiring review by the Board's staff in Washington, D.C. Accordingly, the Board has determined to amend its delegation of authority to the Principal Supervisory Agent to approve state stock to federal stock conversion applications to delegate to the General Counsel the authority to approve conversion applications undertaken for supervisory reasons. The amendment does not affect the delegation of authority to the Principal Supervisory Agent to approve conversion applications not undertaken for supervisory reasons.

On March 26, 1980, by Resolution No. 80-202, the Board delegated to the Principal Supervisory Agent the authority to approve unprotested applications for conversion of state-chartered institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation to federally-chartered institutions conditioned upon the applicant's satisfaction of the criteria established in § 543.9 (12 CFR 543.9) and submission of evidence from the appropriate state authorities within six months from the date of the approval of the conversion application that the conversion is in conformance with state law. The first of these conditions is contained in § 552-2.1. The Board has determined to amend § 552-2.1. to include the second of these conditions in order to ensure that the conversion of state-chartered stock savings and loan institutions to federally-chartered stock savings and loan institutions complies with the applicable laws of the applicants' jurisdictions. However, in order to expedite the conversion process, the Board is requiring that the certification that the conversion is in conformance with state law be made by independent local counsel rather than by the appropriate state authorities.

H. Miscellaneous, Technical and Conforming Amendments

1. A new § 523.3-2 authorizes the Principal Supervisory Agent to approve all unprotested FHLBank membership applications.

2. 12 CFR 523.10(b)(1) is amended to indicate that FDIC-insured banks may include stock-form as well as mutual-form savings banks.

3. 12 CFR 541.8 is amended to include savings banks chartered under section 5 of the Home Owners' Loan Act as federal associations. Previously, the section only referenced federal savings and loan associations so chartered.

4. 12 CFR 541.8–1 is amended to delete the words "A savings and loan", thus allowing the Board to charter interim federal associations that are federal savings banks.

5. In order to clarify to whom questions should be directed regarding conversions to federal mutual charters, and the status of Supervisory Agent recommendations on same, 12 CFR 543.8 is amended to incorporate the substance of former 12 CFR 576.1, regarding mutual savings bank conversions. Similar language exists at 12 CFR 543.2(a), regarding permission to organize a federal association. In addition, § 543.8 is amended to indicate that approval authority for conversions to federal charters is delegated to the Principal Supervisory Agent.

6. An amendment to 12 CFR 543.9(c) stipulates that an eligibility examination by the FSLIC is not a precondition to Board consideration of a request for a federal charter by an FDIC-insured savings bank. Section 543.9(d) is amended to delete reference to a repealed statutory requirement that a state institution seeking a federal charter must receive approval of 51 percent of its members. The question of consent now will be left entirely to state law. In addition, those sections, as well as § 543.9(a), are amended to reflect delegation of authority to the Principal Supervisory Agent to approve conversion applications.

7. 12 CFR 543.10 is removed, and 12 CFR 543.11 is redesignated as § 543.10, with an amendment to supply a reference to the procedures in new § 543.11 as constituting an exception to the normal post-conversion organization rules for federal associations. 12 CFR 576.4, governing organization after conversion to federal charter of federal mutual savings banks, is redesignated as new § 543.11, and amended to specify that it applies only to FMSBs that immediately prior to conversion were state MSBs. References are amended to conform to the new section numbers.

8. A new § 543.12 is added which states that the Board may grant federal charters to FDIC-insured savings banks notwithstanding their failure to obtain FSLIC insurance of accounts.

9. A new § 543.13 is added which states that the Board shall notify the FDIC of applications for federal charters by FDIC-insured institutions, shall consult with it before disposing of such an application, and shall notify it of the Board's determination with respect to the application.

10. 12 CFR 544.2, concerning federal charter amendments, is amended to indicate in the introductory text and paragraph (i) that it applies only to mutual savings and loan associations, and not to federal mutual savings banks, which are governed by another provision in this respect. Section 544.2(c) is amended to delete the word "savings", in recognition of the ability of federal associations to offer demand accounts as well as savings accounts, and § 544.2(f) is revised to replace obsolete references to Charter N and Charter K (rev.) with references to Charter N (Rev.) and Charter L.

11. 12 CFR 577.1–1, setting forth a preapproved mutual capital certificate amendment for federal mutual savings banks, is amended to redesignate it as 12 CFR 544.2–1, after removing existing § 544.2–1.

12. A new 12 CFR 544.2–2 is added, dealing with preapproval of federal mutual savings bank corporate title changes. The language is virtually identical to that of 12 CFR 577.1–2, repealed by these amendments, concerning the same subject.

13. 12 CFR 544.5, regarding prescribed bylaws, is amended to indicate they are applicable only to federal mutual S&Ls.

14. 12 CFR 577.2, regarding bylaws for federal mutual savings banks, is redesignated 12 CFR 544.5–1 and revised to indicate that it applies only to federal mutual savings banks.

15. A new § 544.8 is added to incorporate the substance of 12 CFR 578.1(b), removed by these amendments. Paragraph (a) essentially restates the provision in § 578.1(b) that references in the regulations to federal mutual savings and loan charters shall also be deemed references to federal mutual savings bank charters, also stipulating that references to superseded mutual association charter forms shall be references to the new forms created by these amendments. Paragraph (b) duplicates the requirement in § 578.1(a) that federal mutual savings bank trustees are subject to regulations applicable to federal savings and loan association directors.

16. A new § 544.9 is added, stipulating that Charter B federal mutual savings banks no longer must comply with a now-obsolete charter provision restricting their corporate debt, equity, and consumer loan investments.

17. 12 CFR 546.5, concerning conversions to the state mutual form under a now repealed provision of section 5(i) of the Home Owners' Loan Act of 1933, is deleted.

18. 12 CFR 547.3, 547.6, 549.1(b), 549.2 and 549.3, relating to receiverships, are amended to conform to the statutory requirement that the Board appoint the FDIC as receiver for FDIC-insured federal associations. In addition, the amendment to § 547.6 deletes a confusing reference to liquidation as the sole purpose of a receivership.

19. 12 CFR 549.5–1(a) is amended to stipulate that federal savings bank receivers shall follow procedures for deposit associations. Amendments are made to § 549.5–1 (b) and (c) to provide for the fact that federal associations now may offer demand accounts, and not just savings accounts.

20. The introductory text and paragraph (b) of 12 CFR 552.1 are amended to state that references to Charter S associations also shall be deemed to be references to Charter T associations, and to define a Charter T association, in effect, as a federal stock savings bank. Old paragraph (b) is redesignated as paragraph (c).

21. 12 CFR 552.2–1, dealing with conversions of state-stock associations to federal stock charters, is amended to delete obsolete requirements pertaining to the date on which a state institution became a stock association, and to provide for conversion of state stock savings banks.

22. 12 CFR 552.3(a) is amended by adding a clarifying reference to Charter T associations.

23. 12 CFR 552.9 is amended to substitute references to Charter N (Rev.) for obsolete references to Charter N.

24. 12 CFR 561.1 is amended to add references to federal savings banks, interim federal associations, and interim state associations as institutions that may be insured by the FSLIC, and to stipulate that, except as specifically noted, FDIC-insured federal associations will be subject to regulations applicable to "insured institutions", as are other federal associations.

25. 12 CFR 561.2, defining insured member, is amended to stipulate that, for the purposes of that provision, the term "insured institution" shall not include an FDIC-insured federal association.

26. 12 CFR 561.11 is amended to include savings accounts held at FDIC-insured federal associations within the definition of "savings accounts".

27. 12 CFR 563.7–1 is amended to remove the term "savings and loan", thus clarifying that the provision, which deals with savings deposits or shares of federal associations, applies to federal savings banks.

28. 12 CFR 563.7–4(a) is amended to change the phrase "insured mutual

institution" to clarify that it refers to all insured institutions, including FDIC-insured federal associations, that are in the mutual form.

29. 12 CFR 563.14, regarding payment of dividends, is amended to ensure its applicability to dividends paid to accountholders by FDIC-insured savings banks.

30. 12 CFR 563.15 and 563.16, regarding insurance premiums, are amended to specify that the provisions do not apply to FDIC-insured federal associations.

31. 12 CFR 563.28 is amended to indicate that an FDIC-insured federal association is prohibited from advertising itself as a member of the FSLIC.

32. 12 CFR 563.31 is amended by revising paragraph (a) to state that an FDIC-insured federal association may not obtain deposit insurance in addition to that provided by the FDIC, paralleling the requirement that FSLIC-insured institutions obtain insurance of accounts only from the FSLIC. In addition paragraph (b)(1) is amended to provide that federal savings banks as well as federal savings and loan associations may give bond or security.

33. 12 CFR 563b.3(b)(4), 563b.4(a)(xiv), and 563b.4(b) are to clarify that federal stock charters are available to federal associations insured by the FDIC.

34. 12 CFR 563b.8(d)(2) and (3) are amended to indicate that any eligible mutual, state or federal, may convert to either a Charter S or a Charter T, and that the corporate existence of the converting institution does not terminate.

35. 12 CFR Parts 564 and 565, dealing respectively with settlement of insurance and termination of insurance, are amended to create new §§ 564.11 and 565.9, specifying that those Parts do not apply to FDIC-insured federal associations.

36. 12 CFR Part 569a, dealing with receivers of non-federally chartered insured institutions, is amended by changing the heading to reflect the existence of federal associations other than federal savings and loan associations, and by revising section 569a.1(a) to ensure the non-applicability of that section to federal savings banks.

37. Subchapter E, dealing with rules and regulations for federal mutual savings banks, and consisting of 12 CFR Parts 575, 576, 577 and 578, is removed as obsolete, after relocation of appropriate provisions elsewhere.

38. 12 CFR 583.5 is amended to indicate that an insured institution subsidiary of a savings and loan holding company may be engaging in the business of a savings bank as well as the business of a savings and loan association.

39. 12 CFR 583.6 is amended to include as insured institutions all federal associations insured by the FSLIC or the FDIC.

40. 12 CFR 583.7 is amended to specify that an uninsured institution does not include a federal association insured by the FDIC.

41. 12 CFR 584.1(e) is amended to inndicate that an insured institution may be engaging in the business of a savings as well as the business of a savings and loan association.

Consolidation of Applications

The Board has determined to amend 12 CFR Part 543 to consolidate applications provided for all de novo federal mutual associations. The amendments involve combining the Permission to Organize application and the Petition for Charter application. Formerly, associations had to go through a two-step procedure in order to receive a federal charter. The first step was an application for permission to organize a federal association, which required numerous procedures and conditions. Upon compliance with these conditions, the applicants then had to submit a second application for petition for charter. This application also required numerous procedures and conditions. In combining the two applications, the Board will expedite the application process, delete several unnecessary or duplicative conditions, and cause the application process to apply to all types of new federal charters.

Final Regulatory Flexibility Analysis

Although the regulations promulgated herein have not been proposed for public notice and comment, the Board is providing the following regulatory flexibility analysis:

1. *Reason, objective and legal basis underlying the final rule.* These elements are incorporated above in the supplementary information and definitional sections regarding the regulation.

2. *Small entities to which the final rule would apply.* The final rule would apply equally to all institutions chartered by the Board.

3. *Overlapping or conflicting federal rules.* There are no known federal rules that may duplicate, overlap or conflict with the final regulation.

4. *Alternatives to the final rule.* To the extent that any institution determines to adopt a new charter, the final regulation would benefit its operations. Increased flexibility for all institutions will result from this regulation as well as increased powers for federal associations. The final regulation will not have a disproportionate impact on small institutions, and there is no alternative action that would change the impact of broadened chartering authority on small institutions.

List of Index Subjects in 12 CFR Parts 541, 543, 544, 545, 546, 547, 549, 552, 561, 563, 563b, 564, 565, 569a, 575, 576, 577, 578, 583 and 584

Savings and loan associations, Securities, Insurance, Holding companies.

The Board finds that the public notice and comment procedures of 5 U.S.C. 503(b) and 12 CFR 508.13 are unnecessary for the following reasons: (1) Immediate regulatory action is in the public interest in that the Congress expressly intended, in passing the Garn-St Germain Depository Institutions Act of 1982, that Federal associations and other thrift institutions exercise increased organizational flexibility to meet current, extremely stressful economic conditions, and it will increase the availability of this new power to federal associations; (2) Most federal associations have annual meetings in the first month of the calendar year, notice of which must go out to shareholders 15 to 45 days in advance, and any change in charter would of necessity need to be considered at such a meeting; (3) It will expedite the processing of applications for the several Federal charters; and (4) It will relieve restrictions. The Board further finds that delay of the effective date of this regulatory action pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary for the same reasons.

Since there are a large and complex number of changes in these regulations, the Board is soliciting comments from the public as to the effect of these regulations.

Accordingly, the Board hereby amends Part 523 of Subchapter B, Parts 541, 543, 544, 545, 546, 547, 549 and 552 of Subchapter C, Parts 561, 563, 563b, 564, 565, and 569a of Subchapter D, Parts 575, 576, 577 and 578 of Subchapter E, and Parts 583 and 584 of the Subchapter F, Chapter V of Title 12, Code of Federal Regulations, to read as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 523—MEMBERS OF BANKS

1. Part 523 is amended by adding a new § 523.3-2, to read as follows:

§ 523.3-2 Delegations.

The Principal Supervisory Agent, as that term is defined in § 545.14(a)(3)(i) of this Chapter, is authorized to approve unprotested applications for Bank membership filed by an entity which is eligible for such membership and which satifies the criteria therefor.

2. Amend paragraph (b) (1) of § 523.10 by removing the term "mutual".

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 541—DEFINITIONS

Revise § 541.8 to read as follows:

§ 541.8 Federal association.

A savings and loan association or savings bank chartered by the Board under section 5 of the Act and, except as the Board may otherwise provide, any building and loan, savings and loan, building, or homestead association, organized or incorporated under the laws of the District of Columbia.

§ 541.8-1 [Amended]

4. Amend § 541.8-1 by removing the phrase "A savings and loan" and inserting in lieu thereof the word "An".

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION

5. Amend § 543.1 by revising paragraph (b), as follows:

§ 543.1 Corporate title.

* * * * *

(b) *Title change.* Prior to changing its corporate title, an association must file with the Supervisory Agent a written notice indicating the intended change. The Supervisory Agency shall provide to the association a timely written acknowledgment stating when the notice was received. If, within 30 days of receipt of notice, the Supervisory Agent does not notify the association of his or her objection on the grounds set forth in paragraph (a) of this section, the association may change its title by amending its charter in accordance with § 544.2(i), or § 544.2-2, or § 552.4(c) and the amendment provisions of its charter, except that an association chartered as a Federal Savings and Loan Association may change its title to indicate that it is a Federal Savings Bank, and an association chartered as a Federal Savings Bank may change its title to indicate that it is a Federal Savings and Loan Association, only pursuant to a charter change under § 544.3 of this Chapter.

6. Amend § 543.2 by revising the third sentence of paragraph (b) and revising paragraph (g), as follows:

§ 543.2 Application for permission to organize.

* * * * *

(b) *Form; supporting information.* * * * The applicants shall request a corporate title to be approved by the Board and to be included as Section One of the association's charter. * * *

* * * * *

(g) *Approval.* Decisions on all applications for permission to organize a Federal association will be made by the Board. Approvals of applications will be conditioned on the following: (1) a minimum amount of capital to be paid into the association's accounts prior to insurance of accounts; (2) the submission of a statement that (i) the applicants have complied in all respects with the Act and these rules and regulations regarding organization of a Federal association; (ii) the applicants have incurred no expense in forming the association which is chargeable to it, and no such expense will be incurred; (iii) no money will be collected on account of the association before the Board issues its charter; (iv) an organization committee has been created (naming the committee and its officers); and (v) the committee will organize the association when the Board issues its charter and serve as temporary officers of the association until officers are elected by the association's board of directors under § 543.6 of this Part; and (3) the satisfaction of any other requirement the Board may impose. Approval of an application does not obligate the Board to issue a charter.

* * * * *

§ 543.3 [Removed effective December 15, 1982; see § 543.6(a).]

7. Remove § 543.3.

§ 543.4 [Removed effective Decmber 15, 1982; see § 543.3.]

8. Remove § 543.4.

9. Amend § 543.6 by revising paragraph (a), as follows:

§ 543.6 Completion of organization.

(a)(1) *Temporary officers.* When the Board approves an application for permission to organize a Federal association, the applicants shall constitute the organization committee and elect a chairperson, vice-chairperson, and a secretary, who shall act as the temporary officers of the association until their successors are duly elected and qualified. The temporary officers may effect compliance with any conditions prescribed by the Board.

(2) *Organization meeting.* Promptly upon receipt of a charter, the temporary officers shall call a meeting of the association's capital subscribers; notice of such meeting shall be mailed to each subscriber at least 5 days before the meeting day. Subscribers who have subscribed for a majority of the association's capital, present in person or by proxy, shall constitute a quorum. At such meeting, directors of the association shall be elected according to the association's charter and bylaws, and any other action permitted by such charter and bylaws may be taken; any such action shall be considered an acceptance by the association of such charter and of such bylaws, which shall be in the form provided in Parts 544 and 552 of this Subchapter.

* * * * *

10. Revise § 543.8 as follows:

§ 543.8 General.

(a) With the approval of the Principal Supervisory Agent, any member may, on such conditions as the Board may prescribe, convert itself into a Federal association, if it complies with all laws of its jurisdiction expressly providing for such conversions and with these rules and regulations.

(b) Questions regarding conversions shall be directed to the Board's Supervisory Agent of the district in which the applicant is located. Recommendations by Supervisory Agents and officers and employees of the Board regarding applications for issuance of Federal charters are privileged, confidential and subject to § 505.6 of this chapter.

11. Amend § 543.9 by revising the last sentence of paragraph (a), by revising paragraph (c), and by removing paragraph (d), as follows:

§ 543.9 Applications.

(a) *Filing.* * * * The applicant shall submit any financial statements or other information the Board or the Principal Supervisory Agent may require, and pay all costs, as determined by the Principal Supervisory Agent or the Board, of consideration of the application.

* * * * *

(c) *Action on application.* The Principal Supervisory Agent will consider such application and any information submitted therewith, and may approve the application. The Principal Supervisory Agent will not consider the application of a converting insititution not insured by the Federal Savings and Loan Insurance Corporation, except in the case of a saving bank insured by the Federal Deposit Insurance Corporation, until an eligibility examination has been completed to the satisfaction of the Federal Savings and Loan Insurance Corporation. Approval of an application and issuance by the Board of a charter will be subject to the applicant's (1) compliance with all conditions prescribed in the approval; (2) receipt of approval of the plan of conversion by such vote as may be required by the laws of the applicant's jurisdiction to consider such action; and (3) approval of its application for Federal Home Loan Bank membership, if the applicant is not a member.

§ 543.10 [Removed]

12. Remove § 543.10.

13. Amend § 543.11 by redesignating it as § 543.10 and by revising the first sentence thereof, as follows:

§ 543.10 Organization after conversion.

Except as provided in § 543.11, after a Federal charter is issued under § 543.9 the association's members shall, after due notice, or upon a valid adjournment of a previous legal meeting, hold a meeting to elect directors and take all other action necessary fully to effect the conversion and operate the association in accordance with law and these rules and regulations. * * *

14. Add a new § 543.11 by inserting the text of § 576.4 thereto, revising paragraph (a) thereof, and changing the reference to "§ 576.4" in paragraph (c)(2) thereof to read "this section", as follows:

§ 543.11 Organization, plan for governance during first years after issuance of Federal mutual savings bank charter.

(a) *Organizational meeting.* Except as provided in paragraph (c)(1) of this section, promptly upon receipt of a charter, the officers of a Federal mutual savings bank which, immediately prior to conversion, was a state chartered mutual savings bank, shall call a meeting of the members. Notice for, and conduct of, such meeting shall be in accordance with the bank's Federal charter and bylaws. Business to be conducted at the organizational meeting shall include the election of trustees and any other matters permitted by the charter and bylaws. Any action taken at such meeting shall be deemed and acceptance of the charter and bylaws issued pursuant to § 544.2–2 of this Subchapter.

* * * * *

15. Add a new § 543.12, as follows:

§ 543.12 FDIC-insured Federal savings banks.

The Board may issue a Federal charter to a state-chartered savings bank which is insured or continues to be insured by the Federal Deposit Insurance Corporation.

17. Add a new § 543.13, as follows:

§ 543.13 Notice to FDIC.

Upon receiving an application for a Federal charter by an institution insured by the Federal Deposit Insurance Corporation, the Board shall notify the Federal Deposit Insurance Corporation, shall consult with it before disposing of the application, and shall notify it of the Board's determination with respect to such application.

PART 544—CHARTER AND BYLAWS

17. Amend § 544.1(a) by revising the first sentence of that paragraph; removing the term "Charter N" as the heading at the beginning of the charter form and replacing it with the term "Charter N (Rev.)"; removing the term "savings" wherever it appears in section 4 of the charter, other than in the first sentence, and wherever it appears in section 7 thereof; and revising the introductory text and subsection (6) of section 3, the first sentence of section 4, and the last sentence of section 10 of the charter; as follows:

§ 544.1 Issuance of charter.

(a) *Charter N (Rev.).* Except as provided in paragraph (b) of this section, when the Board approves an Application for Permission to Organize for a Federal mutual association that is a Federal savings and loan association, it shall issue a charter in the following form, or a form which includes any of the additional provisions set forth in § 544.2 if such provisions are specifically requested, known as Charter N (Rev.).

Charter N (Rev.)

* * * * *

3. *Purpose and Powers.* The purpose of the association is to pursue any or all of the lawful objectives of a Federal association; and in the accomplishment of such purpose, it shall have perpetual succession and power: * * *

(6) To raise its capital, which shall be unlimited, by accepting payments on savings and demand accounts representing share interests in the association;

* * * * *

4. *Members.* All holders of the association's savings accounts and demand accounts and all borrowers therefrom are members. * * *

* * * * *

10. *Reserves, surplus and distribution of earnings.*

* * * All holders of savings accounts and demand accounts of the association shall be entitled to equal distribution of assets, pro rata to the value of their accounts, in the event of voluntary or involuntary liquidation, dissolution or winding up of the association.

* * * * *

18. Amend § 544.1(b) by revising the introductory text of that paragraph, and removing the term "Charter K (Rev.)" at the heading of the beginning of the charter form and replacing it with the term "Charter L", as follows:

§ 544.1 Issuance of charter.

* * * * *

(b) *Charter L.* If expressly requested in the Application for Permission to Organize, or in the Application for Conversion to a Federal Association, the Board will issue, in lieu of Charter N (Rev.), a Charter L. The form of Charter L is the same as the form of Charter N (Rev.), except that the heading states "CHARTER L" instead of "CHARTER N (REV.)" and in lieu of the provision in Charter N (Rev.) designated "6. *Withdrawals,"* the following provision is substituted:

Charter L

* * * * *

19. Amend § 544.1 by adding a new paragraph (c) entitled *Charter B (Rev.)* and inserting the text and charter form of § 577.1 thereto; removing the term "Charter B" as the heading at the beginning of the charter form and replacing it with the term "Charter B (Rev.)"; and amending that charter by removing the phrases "established for the primary purpose of providing people with a convenient and safe place to invest their funds and to provide for the financing of homes, and", and *"General Objects and"* contained in section 3, revising section 5 as set forth below, revising the first sentence of section 6 as set forth below and removing the word "savings" from section 6 wherever it appears other than in the first sentence, removing the phrase "in Board Resolution No. ——, dated ——, ——," in section 7 and substituting therefore the phrase "by the Board or its delegatee in connection with action", removing the phrase "charter: *Provided, however,* That the bank's equity, corporate bond, and consumer loan investments may in no event exceed —— percent of its assets." contained in section 10 and substituting therefor the phrase "charter."; removing in section 10 the phrase "Board Resolution No. —— dated ——" and substituting therefor the phrase "action of the Board or its delegatee in connection with action", removing from the third paragraph of section 11 the word "savings" and the phrase "[and checking accounts]" wherever they appear, and removing from section 11 the phrase "Board, such reserves shall include the reserve required for insurance of accounts." and inserting in its place the phrase "Board."; as follows:

§ 544.1 Issuance of charter.

* * * * *

(c) *Charter B (Rev.).*

* * * * *

Charter B (Rev.)

Section 5. *Capital.* The bank may raise capital by accepting payments on savings accounts and demand accounts and by any other means as may be authorized by the Board.

Section 6. *Members.* All holders of the bank's savings accounts and demand accounts and all borrowers therefrom are members. * * *

* * * * *

20. Amend § 544.2 by revising the introductory text; removing from paragraph (c) the word "savings"; removing from paragraph (f) the phrase "Charter N or Charter K (rev.)" and substituting therefor the words "Charter N (Rev.) or Charter L"; and removing from paragraph (i) the word "mutual" and substituting therefor the phrase "mutual savings and loan"; as follows:

§ 544.2 Amendment of charter.

This section constitutes approval by the Board of any of the following amendments to the charter of a Federal mutual savings and loan association:

* * * * *

§ 544.2-1 [Amended]

21. Amend § 544.2-1 by removing the title and text thereof and substituting therefor the title and text of § 577.1-1.

22. Add a new § 544.2-2, as follows:

§ 544.2-2 Preapproved charter amendment.

This section constitutes approval by the Board of the amendment of section 1 of the Federal mutual savings bank charter to effect the change of the corporate title of a Federal mutual savings bank that has complied with § 543.1(b) of this Subchapter.

23. Revise § 544.3, as follows:

§ 544.3 Adoption of new Federal charter by a Federal association.

If the board of directors of a Federal mutual association proposes to amend its charter to read in the form of any other Federal mutual association charter, the amendment may be approved by a majority vote of members present at any duly called regular or special meeting of members. In the case of a Federal stock association, the board of directors of which proposes to amend its charter to read in the form of any other Federal stock association charter, the amendment may be approved by the stockholders by a majority of the total votes eligible to be cast at a legal meeting. In either case, after such vote, the association shall submit the following petition to the Principal Supervisory Agent, together with any requested change in the association's title or location of home office, and the Board thereafter will issue a charter in the form sought, upon approval by the Principal Supervisory Agent or the Board of a change in such name or location:

Federal Home Loan Bank of ————
[City] ————
[State] ————

The undersigned, under § 544.3 of the rules and regulations for the Federal Savings and Loan System, petitions the Federal Home Loan Bank Board to issue to it a charter in the form of Charter ——, fixing the name of the undersigned as ————, and its home office at ————. The present charter fixes the name of the association as ———— and its home office location as ————.

The undersigned, by its secretary, hereby certifies that the members or stockholders, at a meeting duly called and held, adopted the following resolution:

Be it resolved, That the present charter of this association be amended to read in the form of Charter ———— as prescribed in the rules and regulations for the Federal Savings and Loan System, prescribing the name of the association as ———— and fixing its home office location as ————.

In witness whereof, the Secretary of the undersigned has hereunto affixed his hand and the seal of the undersigned this —— day of ————, 19—.

————————————
[Name of Federal Association]
By ————————————
[Corporate Seal]

24. Amend § 544.5 by revising the introductory text, as follows:

§ 544.5 Prescribed form.

A Federal mutual savings and loan association shall operate under the following bylaws, until such bylaws are amended under the procedure therein presecribed.

* * * * *

25. Add a new "§ 544.5-1" by inserting the title and text of § 577.2, removing the term "§ 577.2" wherever it appears therein and substituting therefor the term "§ 544.5-1", and revising the introductory text, as follows:

§ 544.5-1 Prescribed form.

Unless otherwise authorized by the Board, a Federal mutual savings bank shall operate under the following bylaws until such bylaws are amended under the procedure therein prescribed.

* * * * *

26. Add a new § 544.8, as follows:

§ 544.8 References to old and new charters; rules applicable to trustees of Federal mutual savings banks.

(a) References in the Rules and Regulations for the Federal Savings and Loan System to associations with a Charter K (Rev.) or Charter N shall be deemed as also referring respectively to associations with a Charter L or Charter N (Rev.) and, other than in § 545.4 of this Subchapter, as also referring to associations with a Charter B or Charter B (Rev.).

(b) The trustees of each Federal mutual savings bank shall be subject to the Rules and Regulations for the Federal Savings and Loan System (Part 541 et seq. of this Subchapter), the Regulations for the Federal Home Loan Bank System (Part 521 et seq. of this Chapter), and the Rules and Regulations for Insurance of Accounts (Part 561 et seq. of this Chapter), insofar as they pertain to directors of Federal associations, just as if they were directors.

27. Add a new § 544.9, as follows:

§ 544.9 Obsolete charter provision for Charter B associations.

The standard provision in section 10 of Charter B relating to limiting equity, corporate bond and consumer loan investments to a particular percentage of assets is of no force and effect.

PART 545—OPERATIONS

28. Amend § 545.25-1 by revising paragraph (a) as follows:

§ 545.25-1 Employment contracts.

(a) *General.* A Federal savings and loan association with bylaws amended under § 544.6(k), a Federal mutual savings bank or a Charter S or Charter T association, upon specific approval of its board of directors, may enter into employment contracts with its officers and other employees in accordance with § 563.39 of this Chapter.

* * * * *

PART 546—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

29. Amend § 546.1 by revising paragraph (a) as follows:

§ 546.1 Definitions.

As used in §§ 546.2 and 546.3—

(a) "Association" means a Federal association, or interim Federal association, a national bank, and any building and loan, savings and loan, or homestead association, or cooperative bank, or interim state institution, or commercial or industrial bank organized under the laws of any state which may, under those laws, or other applicable law, merge or consolidate with a Federal association.

* * * * *

30. Amend § 546.2 by revising paragraph (a), as follows, and by

removing in paragraph (g) the word "created" and substituting therefor the phrase, "created, if applicable, or any other applicable law":

§ 546.2 Procedure; effective date.

(a)(1) A Federal association insured by the Federal Savings and Loan Insurance Corporation and one or more other associations so insured may merge as prescribed in this Part if, as to any association which is not a Federal association, the merger is in accordance with the laws of the jurisdiction in which the association was organized.

(2) A Federal association insured by the Federal Deposit Insurance Corporation and any one or more other institutions so insured may merge as prescribed in this Part if, as to any such institution which is not a Federal association, the merger is in accordance with the laws of the jurisdiction in which the association was organized, if applicable, and such other laws as may be applicable.

(3) A Federal association insured by the Federal Deposit Insurance Corporation and any one or more other associations insured by the Federal Savings and Loan Insurance Corporation may merge as prescribed in this Part, subject to the prior approval of the Federal Deposit Insurance Corporation, and if, as to any association which is not a Federal association, the merger is in accordance with the laws of the jurisdiction in which the association was organized.

* * * * *

31. Remove § 546.5.

§ 546.5 Conversion from Federal mutual to state-charter mutual. [Removed effective December 15, 1982.]

PART 547—APPOINTMENT OF CONSERVATORS AND RECEIVERS

32. Amend § 547.3 by adding a second sentence, as follows:

§ 547.3 Appointment on other grounds.

* * * In the event a Federal association insured by the Federal Deposit Insurance Corporation has its insured status terminated by the Board of Directors of said Corporation, the Board shall appoint the Federal Deposit Insurance Corporation receiver for that association.

33. Revise § 547.6, as follows:

§ 547.6 Federal Savings and Loan Insurance Corporation or Federal Deposit Insurance Corporation as receiver.

The Board shall appoint only the Federal Savings and Loan Insurance Corporation as receiver for a Federal association which that Corporation insures. The Board shall appoint only the Federal Deposit Insurance Corporation as receiver for a Federal association which that Corporation insures.

PART 549—POWERS OF RECEIVERS AND CONDUCT OF RECEIVERSHIP

34. Amend § 549.1 by revising paragraph (b) as follows:

§ 549.1 Definitions.

* * * * *

(b) "Corporation" means the Federal Savings and Loan Insurance Corporation, except when the Federal Deposit Insurance Corporation is receiver, in which case it means the Federal Deposit Insurance Corporation.

35. Revise § 549.2 as follows:

§ 549.2 Procedure upon taking possession.

The procedure prescribed in § 548.1 of this Subchapter for a conservator taking possession of a Federal association shall also apply to a receiver except that the notice required by § 548.1(c) shall state:

———Federal Savings and Loan Association [or Federal Savings Bank],———, ———, ———, is in the hands of the Federal Savings and Loan Insurance Corporation [or Federal Deposit Insurance Corporation] as receiver appointed by the Federal Home Loan Bank Board.

Federal Savings and Loan Insurance Corporation [or Federal Deposit Insurance Corporation] as Receiver.

By ———

Title ———

Date ———

36. [Revise paragraph (b)(3) of § 549.3, as follows:

§ 549.3 Powers and duties of receiver.

* * * * *

(b) * * *

(3) Deposit funds collected in any bank(s) insured by the Federal Deposit Insurance Corporation, in a Bank, or any other depository institutions approved for that purpose by the Board. All depository bank accounts of the receiver shall be carried as follows: "Federal Savings and Loan Insurance Corporation [or Federal Deposit Insurance Corporation], Receiver for ——— Association";

* * * * *

§549.5–1 [Amended]

37. Amend § 549.5–1 by adding the phrase "or a Federal savings bank" immediately after the word "association" the second time it appears in paragraph (a) thereof; , and amend subparagraph (1) of paragraph (b) thereof by adding in the first sentence the phrase "demand accounts" immediately prior to the word "savings" the first time it appears, adding in the fourth sentence the phrase "demand account," immediately prior to the word "savings" the first time that word appears, and adding in the fifth sentence the phrase"demand account, holder of a" immediately prior to the word "savings" the first time that word appears; and amending paragraph (c) thereof by adding in subparagraph (1) the phrase "demand accounts," immediately prior to the phrase "savings accounts" wherever the latter phrase appears, adding in subparagraph (2) the phrase "demand accounts," immediately prior to the phrase "savings deposits," adding in subparagraph (3) the phrase "demand account," immediately prior to the phrase "savings deposit", and adding in subparagraph (4) the phrase "demand accounts," immediately prior to the term "savings deposits".

PART 552—STOCK ASSOCIATIONS

38. Amend § 552.1 by revising the introductory test, redesignating paragraph (b) as paragraph (c) thereof, and adding a new paragraph (b) thereto, as follows:

§ 552.1 Definitions.

All references in this Subchapter to the following terms shall, with respect to an association with a charter in the form of Charter S or Charter T, have the meaning defined herein.

* * * * *

(b) *Charter T association.* The term "Charter T association" means a Federal savings bank which has its charter in the form of a Charter T. References in this Chapter to Charter S associations or Charter S shall be deemed also as referring respectively to Charter T associations or Charter T.

* * * * *

39. Amend § 552.2–1 by removing the last sentence and revising the first sentence thereof, as follows:

§ 552.2–1 Conversion from state stock to Federal stock charter.

With the approval of the Principal Supervisory Agent or, in connection with a supervisory transaction, with the approval of the General Counsel, any state stock savings and loan association type or state stock savings bank type institution may convert to a Federal stock savings and loan association or a Federal stock savings bank, subject to its compliance with the requirements set forth in §§ 543.8 through 543.10 of this Subchapter governing conversion to a Federal mutual association and its submission of an opinion by independent local counsel within six months from the date of the approval that the conversion is in conformance with applicable state law. * * *

§ 552.3 [Amended]

40. Amend paragraph (a) of § 552.3 by adding the phrase "or Charter T" immediately after the phrase "Charter S".

41. Amend § 552.3 by revising paragraph (b) and adding a new paragraph (c), as follows:

§ 552.3 Issuance of charter.

* * * * *

(b) A Charter S or Charter T in the following form shall be issued to a state stock institution which has converted respectively to a Federal stock savings and loan association or a Federal stock savings bank pursuant to § 552.2–1, except that in a case not involving an association that has converted from mutual to stock form, Section 7 of Charter S or Charter T requiring a liquidation account and all references thereto shall be deleted, Sections 8 and 9 shall be redesignated Sections 7 and 8 respectively, and the optional provision contained in § 552.4(b) of this Part shall not be available.

(c) Where a Charter T is issued, all references in the following form to "Charter S" shall be changed to "Charter T", all references to "Federal Savings and Loan Association" shall be changed to "Federal Savings Bank" and all references to "association" shall be changed to "bank", and the following sentence shall be added to the end of Section 3: "In addition, the bank may make any investment and engage in any activity as may be specifically authorized by action of the Board or its delegatee in connection with action approving the issuance of the charter."

42. Revise § 552.9, as follows:

§ 552.9 Investments, services and borrowings.

A Charter S association may: (a) Make any loan or investment authorized by this Subchapter for a Charter N (Rev.) association; (b) be surety and perform such services as are authorized by this Suchapter for a Charter N (Rev.) association; and (c) borrow, issue obligations, and give security to the same extent authorized by this Subchapter for a Charter N (Rev.) association which has amended its charter under § 544.2(f) of this Subchapter. A Charter T association, in addition to the above, may utilize any authority permitted by this Subchapter for Charter T associations.

43. Amend § 552.13 by revising paragraphs (b)(1), (c) (1) and (2), (d) and (e), as follows:

§ 552.13 Combinations involving Charter S associations.

* * * * *

(b) *Definitions.* * * *

(1) *Association.* Any building and loan, savings and loan, or homestead association, or commercial, industrial, cooperative or savings bank organized under Federal or state law, including interim Federal associations and interim state associations.

* * * * *

(c) *Forms of combination.* * * *

(1) Mergers or bulk purchases of assets in exchange for assumption of liabilities: *Provided,* That (i) all constituent associations have accounts insured by the Federal Savings and Loan Insurance Corporation, except that in combinations involving a Federal association insured by the Federal Deposit Insurance Corporation, all constituent associations have accounts insured either by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation, and (ii) if any constituent is a mutual association, the resulting association shall be mutually held, except in cases involving supervisory mergers, mergers approved under Part 563b of Subchapter D or mergers in which one of the constituents is an interim Federal association or an interim state institution.

(2) Consolidations among Federal associations resulting in Federal mutual associations.

(d) *Agency approval.* Prior written approval of the Board is required for every combination. In determining whether to confer such approval, the Board shall apply the criteria set out in § 571.5 of this Chapter. Prior written approval of the Federal Deposit Insurance Corporation is required for every combination involving both a Federal association insured by the Federal Deposit Insurance Corporation and an association not insured by such Corporation.

(e) *Approval of board of directors.* Before filing for Board approval, the combination shall be approved by each constituent association's board of directors: (1) By a two-thirds vote of the entire board of each Federal association, and (2) as required by state law, or other applicable law, for other constituents.

* * * * *

§ 552.13 [Amended]

44. Amend paragraph (l) of § 552.13 by inserting before the period at the end of the third sentence and the following ", or other applicable law".

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

45. Revise § 561.1, as follows:

§ 561.1 Insured institution.

An "insured institution" is a Federal savings and loan association or Federal savings bank, an interim Federal association, a building and loan, savings and loan, or homestead association, or a cooperative bank, or an interim state institution, whose accounts are insured by the Federal Savings and Loan Insurance Corporation, referred to in this Subchapter as the "Corporation". The Federal Home Loan Bank Board is referred to in this Subchapter as the "Board". Except where otherwise noted, the term "insured institution" shall also be deemed to refer to a Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation.

46. Amend § 561.2 by revising the first sentence, as follows:

§ 561.2 Insured member.

The term "insured member" means a holder of an account or accounts in an insured institution, other than a Federal association insured by the Federal Deposit Insurance Corporation.

* * * * *

42. Amend § 561.11 by inserting before the period at the end thereof the following: "or held by insured depositors in a Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation".

PART 563—OPERATIONS

§ 563.7-1 [Amended]

48. Amend § 563.7–1 by removing the phrase "savings and loan" the first time it appears.

§ 563.7-4 [Amended]

49. Amend the first sentence of paragraph (a) of §§ 563.7–4 by removing the phrase "insured mutual institution" and adding in its place the phrase "insured institution that is in the mutual form".

§ 563.14 [Amended]

50. Amend § 563.14 by adding the word "insured" immediately before the word "institution" wherever the latter word appears, and by adding the phrase "or other account holders" immediately after the phrase "insured members" wherever the latter phrase occurs.

51. Amend § 563.15 by adding a new paragraph (c), as follows:

§ 563.15 **Insurance premiums.**

* * * * *

(c) *FDIC-insured Federal associations.* As used in this section, the term "insured institution" shall not refer to a Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation.

§ 563.16 **[Amended]**

52. Amend § 563.16 by adding in the first sentence, immediately after the term "insured institution" the first time it appears, the phrase "(which, for the purposes of this section, shall not include a Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation)".

53. Revise § 563.28, as follows:

§ 563.28 **Advertising of insurance of accounts.**

An insured institution, other than a Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation, may advertise itself as a "member" of the Federal Savings and Loan Insurance Corporation.

54. Revise paragraph (a), the introductory text of (b) and (b)(1) of § 563.31, as follows:

§ 563.31 **Other insurance or guaranty.**

(a) *General rule.* An insured institution may not acquire any insurance on, or guaranty of, all or any part of its insured accounts in addition to the insurance provided in Title IV of the National Housing Act, other than a Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation, and a Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation shall not acquire any insurance on, or guaranty of, all or any part of its deposits insured thereby in addition to the insurance provided by the Federal Deposit Insurance Corporation.

(b) *Exceptions.* Paragraph (a) of this section notwithstanding: (1) A Federal association may give bond or security pursuant to § 545.24–2 of this Chapter;

* * * * *

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

55. Revise paragraph (b)(4) of § 563b.3, as follows:

§ 563b.3 **General principles for conversions.**

* * * * *

(b) *General requirements.* * * *

(4) The converted institution would not have its accounts insured by the Corporation, except in the case of a Federal association insured by the Federal Deposit Insurance Corporation.

* * * * *

§ 563b.4 **[Amended]**

56. Amend clause (xiv) of paragraph (a)(4) of § 563b.4 by inserting, immediately after the word "Corporation", the following: ", or, in the case of a Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Federal Deposit Insurance Corporation".

57. Amend paragraph (b) of § 563b.4 by revising the heading for the notice to read as follows: "Notice of Filing of an Application for Conversion to Convert to a Stock Savings and Loan Association or a Stock Savings Bank".

58. Revise the first sentence of subparagraphs (2) and (3) of paragraph (d) of § 563b.8, as follows:

§ 563b.8 **Procedural requirements.**

* * * * *

(d) *Termination or amendment of charter.* * * *

(2) A mutual association converting to a Federal stock association shall apply to amend its charter and bylaws to read in the form of a charter and bylaws for a Charter S or Charter T association. * * *

(3) The corporate existence of a mutual association converting to a Federal stock association shall not terminate, but the converted association shall be deemed to be a continuation of the entity of the association so converted. * * *

* * * * *

PART 564—SETTLEMENT OF INSURANCE

59. Add a new § 564.11, as follows:

§ 564.11 **FDIC-insured Federal associations.**

Federal associations the deposits of which are insured by the Federal Deposit Insurance Corporation are not deemed to be insured institutions for the purposes of this Part.

PART 565—TERMINATION OF INSURANCE

60. Add a new § 565.9, as follows:

§ 565.9 **FDIC-insured Federal associations.**

Federal associations the deposits of which are insured by the Federal Deposit Insurance Corporation are not deemed to be insured institutions for the purposes of this Part.

PART 569a—RECEIVERS FOR INSURED INSTITUTIONS OTHER THAN FEDERAL SAVINGS AND LOAN ASSOCIATIONS

61. Amend the heading of Part 569a removing the phrase "SAVINGS AND LOAN".

§ 569a.1 **[Amended]**

62. Amend paragraph (a) of § 569a.1 by adding the phrase "or Federal savings bank" immediately after the word "association" wherever that word appears.

SUBCHAPTER E—RULES AND REGULATIONS FOR FEDERAL MUTUAL SAVINGS BANKS

63. Remove Subchapter E in its entirety, to read as follows: Subchapter E—Rules and Regulations for Federal Mutual Savings Banks [Removed effective December 15, 1982.]

SUBCHAPTER F—REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

PART 583—DEFINITIONS

§ 583.5 **[Amended]**

64. Amend § 583.5 by adding the phrase "or savings bank" immediately after the phrase "savings and loan".

§ 583.6 **[Amended]**

65. Amend § 583.6 by removing the term "savings and loan" the first time it appears, and by inserting before the period at the end thereof the following: ", and any Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation".

§ 583.7 **[Amended]**

66. Amend § 583.7 by inserting before the period at the end thereof the following: ", but does not mean a Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation".

PART 584—REGULATED ACTIVITIES

67. Amend paragraph (e) of § 584.1 by adding the phrase "or savings bank" immediately after the phrase "savings and loan" the second time the latter phrase appears.

(Sec. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464,); Sec. 401, 402, 403, 405, 406, 407, 48 Stat. 1255, 1256, 1257, 1259, 1260, as amended (12 U.S.C. 1724, 1725, 1726, 1728, 1729, 1730); Sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947; 3 CFR, 1943–1948 Comp., p. 1071)

By the Federal Home Loan Bank Board
J. J. Finn,
Secretary.
[FR Doc. 82-34448 Filed 12-21-82; 8:45 am]
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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 4, 15, 16, 18, 21, 32, 33, 145, 147, 155, 170 and 180

Domestic Exchange-Traded Commodity Options; Expansion of Pilot Program To Include Options on Physicals

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: This Commodity Futures Trading Commission ("Commission") has previously adopted regulations to govern a three-year pilot program under which options on certain commodity futures contracts will be permitted to be traded on and through the facilities of domestic boards of trade designated by the Commission as contract markets for options trading. The Commission indicated at the time that it intended to supplement those rules with rules authorizing the trading of options on physicals on presently-designated contract markets and on other boards of trade which may qualify for designation to trade such options. The Commission has now adopted rules which, subject to review by the Commission's Congressional oversight committees pursuant to Section 4c(c) of the Commodity Exchange Act, authorize the trading of options on physicals, thereby completing this first phase of the pilot program. The new rules allow any domestic board of trade, regardless of whether it is currently engaged in the trading of futures contracts or options on those contracts, to apply for contract market designation for one option on a physical. The Commission is also amending a number of other rules, which apply to futures contracts and to options on futures contracts, for purposes of clarification as well as to include appropriate references to option transactions.

EFFECTIVE DATE: Except as specified herein, the rules will become effective January 21, 1983. The amendments to §§ 1.3(*ll*), 33.4, 33.6, and 33.7 (except §§ 33.7(b)(2)(viii), (c), (d)) will become effective upon the expiration of 30 calendar days of continuous session of Congress after the transmittal of those rules, and related materials, to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry pursuant to Section 4c(c) of the Commodity Exchange Act, but not before further notice of the effective date is published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Special Counsel, or Kenneth M. Rosenzweig, Assistant Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street N.W., Washington, D.C. 20581. Telephone: (202) 254-8955. For information concerning amendments to 17 CFR Parts 15-18 and 21, contact: Lamont L. Reese, Associate Director, Division of Economics and Education, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Telephone: (202) 254-3310.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 3, 1981, the Commission published regulations to establish a three-year pilot program for the trading, on domestic exchanges, of options on certain commodity futures contracts. 46 FR 54500. Those rules, however, did not authorize or otherwise directly apply to options on actual commodities ("physicals"). The Commission noted at that time that it was "exercising only one aspect of its jurisdiction with respect to options" [1] and, on the same date, published a separate notice of proposed rulemaking in which it reaffirmed its intention to adopt rules which would permit the trading of options on physicals. 46 FR 54570.

The Commission received nineteen comments in response to that notice. Only three of those comments, however, offered specific suggestions as to how the Commission's rules should be amended to include options on physicals. In an effort to engender as much public participation as possible, the Commission thereafter published for public comment proposed rules which would further amend the Commission's regulations to accommodate options on physicals and to make minor clarifying and conforming changes to certain of the Commission's other regulations. 47 FR 28401 (June 30, 1982).

The Commission received seventeen comment letters in response to its June 1982 proposal. The commentors included six contract markets, three securities exchanges which list stock options for trading, five futures commission merchants ("FCMs"), a trade association, a law firm, and the National Futures Association. The Commission has carefully considered those comments, as well as the comments it received in response to the regulations proposed in June 1981 to establish the option pilot program [2] and its November 3, 1981 notice of proposed rulemaking and, as is discussed in greater detail below, has determined to adopt regulations which will permit any board of trade—irrespective of whether it is presently designated as a contract market for futures trading or for options on futures contracts—to apply for designation as a contract market for the trading of one option on a physical. These regulations also permit, in appropriate cases, the "cash settlement" of options on physicals.

II. Completion of the First Phase of the Pilot Program

When the Commission proposed rules to incorporate options on physicals within the scope of the pilot program, it proposed to allow any board of trade meeting the requirements of the Act and the Commission's regulations to apply for designation to trade one option on a physical.[3]

Three commentators supported the Commission's proposal on the grounds that the inclusion within the pilot program of boards of trade that are not presently designated as contract markets would enhance competition and the quality of the data generated by the pilot program. A fourth commentator disagreed, stating that such a previously-undesignated board of trade would be unable to monitor the interaction of prices for the option and the related futures contract and that the activities of persons not subject to the jurisdiction of the contract market designated to trade the related futures contract could adversely affect the operations of that contract market. The Commission has considered these comments, as well as the comments it has received in response to earlier requests for comments on this question,[4]

[1] *Id.* at 54501.

[2] *See* 46 FR 54570, 54571 n.2 (November 3, 1981), referring to 46 FR 33293 (June 29, 1981).

[3] Proposed § 33.4(a)(6). By comparison, before it may be designated as a contract market for options on a futures contract, § 33.4(a)(3) specifies that a board of trade must first be designated as a contract market for that underlying futures contract.

[4] In connection with its June 1981 proposal to establish a pilot program for options trading and subsequently, in a notice of proposed rulemaking relating solely to options on physicals, the Commission requested comments as to whether it should restrict the trading of options on physicals to those boards of trade which are designated as a contract market for a futures contract which draws on the same deliverable supply as the proposed option on a physical. 46 FR 33293, 33295 (June 29, 1981); 46 FR 54570, 54571 (November 3, 1981).

and has determined not to preclude previously undesignated boards of trade from participating in this portion of its pilot program.

Although, as noted earlier, a board of trade must be designated as a contract market for futures trading before it may be designated for the trading of options on that futures contract, the Commission is not convinced that similar restrictions are necessary with respect to options on physicals. In this regard, the Commission notes that all contract markets—whether designated for futures contracts, options on futures contracts, or options on physicals—must conduct regular and continuous surveillance of the underlying cash market.[5] A contract market which has been designated for a futures contract involving a commodity which also underlies an option on a physical would have market surveillance responsibilities which are essentially no different from its present obligation to monitor activity in the cash market underlying the futures contract. Thus, the Commission does not believe that any regulatory benefits would be achieved by limiting involvment in this portion of the pilot program to those exchanges and FCMs which are already participating in that program.[6]

The Commission also proposed to limit each exchange to no more than one option on a futures contract and one option on a physical. Proposed § 33.4(a)(6). In seeking to determine the appropriate scope of the pilot program, however, the Commission specifically requested comments as to whether it should nonetheless allow each exchange to trade any two option contracts, regardless of whether those option contracts would involve options on futures contracts, options on physicals, or one of each type of option. 47 FR at 28404.

The Commission received a wide range of comments on this question. A number of the commentators urged the Commission to allow the exchanges to select either two options on futures or two options on physicals. These commentators maintained that the regulatory burdens on the Commission and on the exchanges would not be significantly greater if the Commission were to allow such an election rather than limit further expansion of the pilot program to one option of each type. One of these commentators further stated that inasmuch as Section 15 of the Commodity Exchange Act ("Act") (7 U.S.C. 19) directs the Commission to endeavor to use the least anticompetitive means of accomplishing its objectives, the Commission should allow the exchanges to decide how to allocate the permitted number of option contracts between options on futures and options on physicals in order to develop whichever contract a particular exchange believed would be most economically viable. Other commentators, concurring in the Commission's decision to proceed cautiously with any expansion of the pilot program, urged the Commission to adhere to its proposal and allow only one option of each type. Finally, one commentator suggested that the Commission defer any measures which would permit the trading of options on physicals and instead, expand the pilot program solely to allow each qualifying exchange to offer two options on futures contracts.

The Commission has stated, both in the **Federal Register** releases accompanying the proposed and final regulations for exchange-traded options[7] and in the materials submitted to Congress pursuant to Section 4c(c), that it intends to proceed with due caution in any expansion of the option pilot program. After careful consideration of all the comments and other relevant factors, the Commission has decided to broaden the pilot program no further than is necessary to allow each qualifying exchange to be designated solely for one option on a futures contract and one option on a physical.[8] Although the unique attributes of options on physicals[9] will complement the Commission's assessment of the use and market performance of option contracts, the Commission has chosen to proceed in a controlled and orderly manner until both the Commission and the exchanges have had greater experience with the trading of options under the pilot program. The Commission thus views the adoption of rules implementing the inclusion of options on physicals as constituting the completion of the first phase of the option pilot program.[10] The Commission believes that the primary goal of the option pilot program—the development of data and information which will permit the Commission to determine whether and under what conditions options trading should be allowed to continue after the pilot program has terminated[11]—are best served, at least at this juncture, by this balanced approach.

This Commission is, of course, cognizant of its responsibilities under Section 15 of the Act. Section 15, however, does not require the Commission to subordinate the policies and purposes of the Act to those of the antitrust laws. Section 15 requires only that the Commission, in achieving the goals and policies of the Act, consider the public interest served by the antitrust laws and endeavor to use the least anticompetitive means available. Limitations of the type now being adopted by the Commission are, of course, inherent in an experimental pilot program. Moreover, Section 15 does not require the Commission to adopt the least anticompetitive course of action where the objectives, policies and purposes of the Commodity Exchange Act would be better served in some other way.[12] The Commission further

[5] *See, e.g.*, Commission rule 1.51(a)(1), 17 CFR 1.51(a)(1).

[6] The Commission expects that boards of trade which have not previously been designated as, or applied for designation as, contract markets for the trading of options on futures contracts will apply for designation for options on physicals. Because § 33.3(b)(1) presently restricts the solicitation and acceptance of option customers' orders to those FCMs which are members of the contract market on which the option is traded, the Commission expects that the participation in the pilot program of additional exchanges should further broaden the number of FCMs who may offer at least one commodity option to option customers.

[7] *See, e.g.*, 47 FR 28401, 28404 (June 30, 1982); 46 FR 54500, 54501–02 (November 3, 1981); 46 FR 33293, 33294, 33295 (June 29, 1981).

[8] By letter dated December 9, 1981, the Board of Trade of the City of Chicago ("CBT") petitioned the Commission to repeal regulation 33.4(a)(4) which, at the time that petition was submitted, prevented a board of trade from being designated as a contract market for more than one option on a futures contract and, in particular, precluded the CBT from applying for contract market designation for options on Government National Mortgage Association collateralized delivery receipt futures contracts. In amending § 33.4 to allow the boards of trade to be designated solely for one option of each type, the Commission has considered the views of the CBT in support of its petition. The petition of the CBT has been denied to the extent that the CBT would seek authority to trade more than one option on a future contract or one option on a physical.

[9] For example, and as discussed elsewhere in this **Federal Register** release, the Commission has declined to require a limited period (or a single date) for the exercise of options on physicals. As a result, unlike futures contracts which have a much more limited delivery period, options on physicals could be exercised at any time prior to expiration.

[10] The Commission has previously indicated, both in the **Federal Register** notice announcing the adoption of the pilot program regulations and in the materials provided to the Commission's Congressional oversight committees pursuant to Section 4c(c) of the Act (7 U.S.C. 6c(c)), that it intended to supplement the pilot program regulations to permit the trading of options on physicals.

[11] 46 FR 33293, 33294 (June 29, 1981).

[12] *British American Commodity Options Corp.* v. *Bagley*, Comm. Fut. L. Rep. (CCH) ¶ 20,245 at 21,334 (S.D.N.Y. December 21, 1976), *aff'd in part and rev'd in part on other grounds*, 552 F. 2d 482 (2d Cir.), *cert. denied*, 434 U.S. 938 (1977).

believes that these restrictions are reasonable and necessary if it is to limit appropriately the phased expansion of the pilot program. The Commission nonetheless intends to monitor closely all facets of option trading under the pilot program and will use the experience gained as a result of that review to determine if further expansion of the pilot program should be permitted.[13]

When it adopted regulations governing the trading of options on futures contracts, the Commission indicated that it would simultaneously review all option designation applications which were received by a specified date. The Commission has decided, however, that this approach is unnecessary to this completion of the first phase of the pilot program and therefore, will consider applications for contract market designation for the trading of options on physicals in accordance with the policies and practices that normally apply to such applications.[14]

Although the preponderance of the rules which the Commission is now adopting will become effective thirty days after publication of this **Federal Register** notice, certain of those rules which relate specifically for the trading of options on physicals will not become effective until after the conclusion of the Congressional review period specified in Section 4c(c) of the Act. Thus, although the Commission will accept applications for contract market designation made in accordance with these rules at any time, it will not designate any board of trade as a contract market for the trading of options on physicals until such time as the Commission provides notice in the **Federal Register** that those latter rules have been transmitted to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry in accordance with the requirements of the Act and have thereafter been declared by the Commission to be effective.

III. Commodity Option Transactions

The Commission proposed to define the term "physical" principally to enable the Commission to differentiate, where necessary, between references in its regulations to options on physicals and options on futures contracts. One commentator noted that the proposed definition could apply to certain transactions which would be excluded from the Commission's jurisdiction upon the passage of legislation affecting the respective jurisdictions of the Commission and the Securities and Exchange Commission. As the Commission stated in the **Federal Register** release accompanying the proposed regulations, the definition of "physical" is intended to be coextensive with the Commission's jurisdiction with respect to commodity options and would therefore be limited by any statutory limitation of the Commission's authority with respect to options on securities or exempt securities. 47 FR 28401, 28402 (June 30, 1982). Section 1.3(11) is therefore being adopted without change.

The Commission proposed to amend § 33.4(a)(3), which relates to demonstrations by applicant exchanges of continued compliance with the requirements for contract market designation, to make the requirements of that section applicable solely to options on futures contracts. The Commission also proposed to establish a comparable rule (§ 33.4(a)(4)) for those boards of trade which are already designated as a contract market for futures contracts or options on futures contracts and which are applying for contract market designation for options on physicals. One commentator, noting that neither rule would apply to an applicant board of trade which is not yet designated as a contract market for either futures contracts or options on futures contracts, suggested that the Commission rectify this apparent disparity. As the Commission indicated when it proposed these rules, however, such a board of trade still would be required to demonstrate compliance with the requirements of Sections 5 and 5a of the Act (7 U.S.C. 7, 7a) as part of its initial application. The Commission is, therefore, adopting §§ 33.4(a) (3) and (4) without change.

Compliance with the conditions and requirements of Sections 5 and 5a of the Act would also entail compliance with, *inter alia*, Commission rules 1.51 and 1.52 (17 CFR 1.51, 1.52). Thus, the Commission notes that although the references to § 1.50 (17 CFR 1.50) contained in §§ 33.4(a) (3) and (4) necesarily would apply only to boards of trade already designated for futures or option trading in the commodity which is the subject of the application, the Commission will evaluate especially carefully any exchange's application for contract market designation for option trading where the Commission's experience with that exchange indicates that the exchange is not satisfactorily discharging its self-regulatory responsibilities under the Act and the regulations thereunder. (Of course, nothing in § 33.4(a) (3) or (4) limits the Commission's authority to make a "§ 1.50 call" with respect to any designated futures or option contract.) Similarly, the Commission would in appropriate cases consider any disciplinary actions against or sanctions imposed on an applicant by the Securities and Exchange Commission as bearing upon the board of trade's ability and willingness to comply with the requirements of the Act and the Commission's regulations.

Sections 33.4(a)(1)(ii) specifies that options on futures contracts may be exercised only by the establishment, by book entry, in the clearing organization of positions in the underlying futures contract. By comparison, the Commission's June 30, 1982 proposal did not include any restrictions on the delivery mechanism for options on physicals. Instead, the Commission announced its intention, should the proposed regulations be adopted, to "consider applications for contract market designation which provide for cash settlement in lieu of actual delivery of [the] underlying physical in the event of exercise of an option on a physical." 47 FR at 28403. In this regard, the Commission noted that cash settlement of options on physicals might be appropriate in certain circumstances, such as where cash settlement would reduce the possibility of disruption of either the cash or futures markets or facilitate trading in the option itself.

The Commission received three comments on this issue. Two commentators suggested that cash settlement should not be permitted at all while the other commentator stated that cash settlement should be permitted only where the related futures contract is settled in cash. One of these commentators further stated that a central issue in the evaluation of options on physicals is the reliability and accessibility of cash market price quotations.

The Commission has decided, after careful review of the comments, to neither prohibit nor require cash

[13] Legislation now pending in Congress (H.R. 5447 and S. 2109) would remove the ban, contained in Section 4c of the Act (7 U.S.C. 6c), on options involving the commodities specifically enumerated in Section 2(a)(1) of the Act (7 U.S.C. 2). If that legislation is enacted, the Commission's experience with trading under the pilot program will be of significance to Commission decisions on the appropriate regulatory framework for such options.

[14] Section 33.5(c) provides, in pertinent part, that contract market designations for option trading "shall be for a period not to exceed three years * * * or such shorter period as the Commission may specify. * * *" Because the pilot program will terminate, unless otherwise extended, on September 30, 1985 (three years after the effective date of the initial designations under the pilot program), contract market designations for options on physicals will also cease to be effective after that date absent further action by the Commission.

settlement in lieu of actual delivery of the underlying physical. The Commission reaffirms its belief that cash settlement of options on physicals may be approporiate in certain circumstances and that the appropriateness of cash settlement is best addressed in the context of specific exchange proposals for option trading where the potential benefits and drawbacks of cash settlement may be evaluated fully in the context of the terms and conditions of the option contract.

One of the commentators maintained that allowing cash settlement could increase the likelihood that an option's settlement prices would be tied to the closing or settlement prices for the related futures contract or option on that futures contract. As discussed elsewhere in this **Federal Register** release, however, the Commission recognizes the importance of a reliable and accessible cash-market price for the physical underlying an option on a physical and has adopted, in § 33.4(a)(5)(iv)(B), a requirement that the boards of trade demonstrate an adequate cash price series as part of the designation process. Indeed, one of the reasons the Commission has required an adequate cash price series is to avoid reliance on the closing or settlement prices for a related futures contract (or option on a futures contract) for the settlement price of an option on a physical.

The Commission proposed that a board of trade applying for contract market designation for the trading of options on physicals demonstrate that "the cash market for the underlying physical exhibit sufficient liquidity so that option grantors and purchasers can purchase or sell the underlying physical at its economic value in normal cash marketing channels." Proposed § 33.4(a)(5)(iv)(A). The Commission proposed this requirement because of its belief that non-commercial traders should be able to buy or sell the physical underlying the option at its economic value without significant disadvantage relative to other traders.

This rule for options on physicals parallels a requirement for futures market liquidity (§ 33.4(a)(5)(iii)) applicable to options on futures contracts. Both rules seek to prevent the trading and exercise of options from disrupting underlying cash and futures markets. The Commission's rule for options on physicals also helps to ensure that those options can be exercised at their economic value, thereby providing an opportunity for the option holder to receive the intrinsic value of the option. The lack of a liquid cash market could especially disadvantage holders of deep-in-the money options who might have to accept significant discounts from the intrinsic value of the option if the ability to receive the economic value of the physical through exercise of the option did not exist.

Four commentators objected to this proposed designation requirement. These commentators asserted that the standard was vague, that cash market liquidity was irrelevant under certain circumstances, and that the existence of a liquid cash market prior to the commencement of option trading was not necessary. The Commission believes that its rule is sufficiently specific to apprise the boards of trade of the minimum standards necessary to demonstrate liquidity in the underlying cash markets. These measures of liquidity could include, in appropriate cases, bid-ask spreads, the number of transactions per unit of time, and the closeness of the prices for large and small orders. The Commission also recognizes, as mentioned by one commentator, that option trading may itself encourage the development of liquid cash markets. However, the Commission is not persuaded that a mere expectation that such liquidity will develop after the introduction of option trading is an appropriate basis upon which to trade options on physicals in view of the limited, rigidly-controlled nature of the option pilot program. The Commission, therefore, will not authorize options on physicals which lack the basic liquidity in the underlying physicals market which the Commission deems necessary for market and customer protection. The Commission has accordingly determined to adopt § 33.4(a)(5)(iv)(A) as proposed.

The Commission also proposed that a board of trade seeking designation to trade options on physicals demonstrate the existence of an accurate, widely-disseminated price series for the underlying physical. Proposed § 33.4(a)(5)(iv)(B). In proposing this requirement, the Commission stated that it deemed such a price series to be necessary because option premiums and the intrinsic value of an option on a physical will be derived from the current market value of the underlying physical. Thus, the Commission stated that a reliable price series would be essential if option customers were to be able to measure the value of their option contracts.

Three commentators opposed this proposal on several grounds. One commentator suggested that because there is no similar requirement for futures contracts or for options on futures contracts, the Commission should not adopt such a requirement for options on physicals. The Commission disagrees. First, while futures markets can serve a price discovery and price-basing function, there is no direct analogue to these functions in the option markets. Second, a requirement concerning an appropriate cash price series is not necessary for options on futures contracts inasmuch as the futures price serves the same purpose as the cash price series serves for options on physicals. Moreover, the Commission notes that its rules already specify that options on futures contracts can be designated only where there is a liquid underlying futures market and where the applicant board of trade complies with the conditions and requirements for designation as a contract market—*i.e.*, where the underlying futures contract generates a reliable and widely-disseminated price series. *See* § 33.4(a)(5)(iii) and § 33.4(a)(3).

The Commission further notes that the functions of the option markets do not include discovery of the price of the underlying future or commodity. Specifically, there is no single or small range of prices of the underlying future or commodity which can be imputed from an option premium because the option premium also depends on such subjective elements as expected future price volatility and price distributions of the underlying future or commodity. Accordingly, the Commission does not agree with the commentator who stated that the value of the underlying commodity can be derived from the price of the option itself.

Finally, one commentator noted that the commodities markets typically do not have accurate, widely-disseminated price series. In the absence of accurate and widely-disseminated cash prices, however, market participants and members of the public do not have an objective standard against which to measure the price and performance of their options and on which to base their decisions to maintain, offset or exercise their option positions. As indicated above, the Commission believes that in order to maintain the customer information and protection standards already established for options on futures contracts, such commodities should not be eligible for designation for options on physicals. The Commission has therefore decided to adopt § 33.4(a)(5)(iv)(B) as proposed.

As proposed, § 33.4(a)(5)(iv)(C) would require an applicant board of trade to demonstrate that the trading of options on physicals will not disrupt trading in either the cash market for the underlying physical or in any futures contract. The Commission received two comments on its proposal. One commentator stated that § 33.4(a)(5)(iv)(C) was redundant in light of proposed §§ 33.4(a)(5)(iv)(A) and (B) while the other commentator supported the proposed rule.

The Commission does not agree with the commentator who suggested that this requirement is superfluous; rather, the Commission believes that this rule complements §§ 33.4(a)(5)(iv)(A) and (B). Specifically, the Commission notes that, without proper safeguards, the trading of options on physicals could disrupt trading in liquid cash markets and in related futures markets, particularly during or immediately before the delivery period. The Commission has accordingly determined to adopt § 33.4(a)(5)(iv)(C) as proposed. The Commission notes that under this rule, applicant boards of trade will be required to demonstrate that they have taken into account potential adverse effects on the underlying cash market in the design of their proposed option on physicals contracts and, in those cases in which related futures contracts are trading, have also considered the potential adverse effects on such futures contracts. In addition, applicant boards of trade must demonstrate that they have a systematic means of monitoring and acting to prevent any disruptions of the cash market and related futures markets, if any, particularly when the period during which options on physicals are likely to be exercised is close to the futures delivery period.

Proposed §§ 33.4(a)(7), (8) and (9) would have codified and made applicable to the trading of options on physicals the requirements of Commission Guideline No. 1. Several commentators objected to this codification on the grounds that it would reduce flexibility in the contract designation process.[15] While the Commission does not necessarily agree with these comments, it has determined not to codify these requirements in its option regulations for the reasons set forth in the **Federal Register** release accompanying the Commission's recent revision of Guideline No. 1.[16] The Commission is instead adopting a requirement that an applicant board of trade demonstrate, consistent with a description of the cash market furnished by the board of trade, that the individual terms and conditions of the contract are justified. Section 33.4(a)(5)(iv)(D).[17]

Section 33.4(b)(1)(iii) has been amended to require option contract markets to specify "the point, in terms of the underlying futures contract or underlying physical, at which a new strike price will be introduced in any option which is already trading." One commentator urged the Commission alternatively to allow strike prices for options on physicals to be based upon futures contracts where there is no widely-disseminated cash price series for the underlying physical. The Commission, however, would not designate an option on a physical in the absence of such a cash price series. *See* § 33.4(a)(5)(iv). Furthermore, the Commission is concerned that allowing strike prices for options on physicals to be based, in whole or in part, on a futures contract—which may or may not be traded on the same exchange on which the option is traded—could have adverse effects on the pricing efficiency of that futures contract.

Proposed § 33.4(a)(8)(iv) would have required a board of trade applying for contract market designation for the trading of options on physicals to include in its application an analysis and justification of any proposed option expiration date. Although the Commission did not propose to otherwise restrict the time when such an option could be exercised, the Commission specifically requested comments as to whether there should be a limited period or a single date for the exercise of options on physicals. 47 FR 28401, 28403 (June 30, 1982).

The Commission received six comments on this question, three of which supported permitting exercise at any time prior to the expiration of the option and two of which opposed unlimited exercise. The sixth commentator favored exercise at any time during the life of the option only if the option expiration date occurred prior to the first notice date for delivery of any related futures contract.

After considering these comments, the Commission remains of the opinion that restrictions on the exercise of options on physicals are best reviewed on a case-by-case basis. The Commission agrees, however, with the commentator who noted that the exercise of options on physicals may be disruptive of the futures markets if, for example, option grantors or purchasers take opposite positions in the futures market and then make or take delivery on those futures contracts if the options are exercised. That commentator argued that the delivery period for a futures contract should be protected from such adverse effects in the same manner as it is protected from the trading of options on futures. The Commission finds merit in this comment and is therefore modifying § 33.4(d)(1) to extend to options on physicals the requirement that the expiration date of the option ordinarily precede by at least ten business days the first notice day or last trading day of any related futures contract.

In response to a suggestion made by one of the commentators, the Commission has modified the last sentence of paragraph (1) of the Options Disclosure Statement (§ 33.7(b)(1)) in order to clarify its meaning. The Commission has also modified that paragraph to alert option customers to the possibility that the exercise period for some options may be restricted.

Another commentator noted that the description of the profit potential of deep-out-of-the-money options as "remote" (§ 33.7(b)(6)) was not necessarily accurate. Specifically, this commentator stated that an option customer could profit on the purchase of a deep-out-of-the-money option upon offset after a price change in the underlying futures contract or physical resulted in a favorable price change in the option premium. The Options Disclosure Statement, however, does not indicate that an option purchaser cannot profit from such an option position; instead, it indicates that such profits are ulikely. Therefore, although this commentator is correct, the Commission believes that this is a matter that is best explained orally to those option customers who may be contemplating the purchase of a deep-out-of-the-money option and that further elaboration of this issue in the Disclosure Statement would be unnecessarily confusing.

The Commission proposed to amend paragraph (b)(2)(viii) of the Options Disclosure Statement to make clear that the required discussion of the effects of limit moves in the futures market did not apply to options on physicals. Specifically, that rule requires FCMs to provide their option customers with the following information for options on futures contracts:

> The loss (or profit) that could be generated by the option position by a limit move (or a series of limit moves) in the underlying

[15] A number of the commentators reiterated or incorporated by reference comments they had already made in connection with the Commission's earlier proposed codification of Guideline No. 1. *See* 45 FR 73504 (November 5, 1980).

[16] 47 FR 49832 (November 3, 1982).

[17] This demonstration should be made in accordance with Sections A and B, respectively, of revised Guideline No. 1. The justification required under 33.4(a)(5)(iv)(D) is not the only economic requirement for designation of a contract market to trade options on physicals. *See, e.g.*, § 33.4(a)(5)(i), which requires a demonstration of a legitimate economic purpose, such as the reduction of commercial risks.

future, both in total dollars and as a percentage of the total cost of the option.

One commentator urged the Commission to delete this requirement. In support its position, that commentator stated that its experience had already indicated that compliance with this requirement was extremely costly and inherently difficult because it necessitated a series of complex computations that are not readily understood by option customers.

The Commission has reconsidered that portion of its disclosure rule in light of its objective that all option customers be fully informed of the risks involved in option trading. *See* 46 FR 54500, 54507 (November 3, 1981). The Commission agrees that a literal calculation of the effects of limit moves on the profit potential of an option is unduly complicated and provides information that is, at best, of little value to option customers. The Commission believes, however, that a generic discussion of the possibility of limit moves in the futures contract underlying a commodity option may well be of importance to option customers, particularly insofar as trading in pilot program options "may attract customers who heretofore have had little or no exposure to the commodity markets." *Id.* The Commission has, therefore, modified that portion of its disclosure rule to eliminate the present requirement that an FCM provide its option customers with detailed calculations of the effects of limit moves and instead, will require that an FCM provide generalized information as to the effect of such market activity.

The Commission is aware that the amendments to the Disclosure Statement necessitated by the inclusion within the pilot program of options on physicals will ultimately require revision of those Statements. The Commission does not believe that it is necessary, however, to require the amendment of those Statements prior to the commencement of trading in options of physicals. Accordingly, the Commission will deem an FCM to be in compliance with the requirements of § 33.7(a) if, subsequent to the final adoption of these amendments to § 33.7, it continues to provide to its prospective option customers Options Disclosure Statements that have not been amended to reflect the revisions that are made necessary by the trading of options on physicals. This "no action" position will terminate, however, when the Commission designates one or more exchanges as contract markets for the trading of options on physicals. All FCMs will then be required to provide the same Options Disclosure Statement, irrespective of whether a particular FCM intends to offer options on physicals to its option customers.

It has come to the Commission's attention that certain portions of its disclosure rules are susceptible of interpretations which are contrary to the Commission's intentions. For example, § 33.7(a) provides that "[t]he disclosure statement and the acknowledgment [Signed and dated by the option customer] shall be retained by the futures commission merchant in accordance with § 1.31." The Commission is aware that this provision could be interpreted to mean that an FCM must maintain one copy of that statement for each of its option customers. The rule is intended, however, generally to require only that an FCM retain a single copy of the Disclosure Statement. Of course, should an FCM provide different versions of the Disclosure Statement to different option customers (such as where the Disclosure Statement has been revised to incorporate references to options on physicals), the FCM's records must accurately reflect which version of the Disclosure Statement was provided to particular option customers. Furthermore, an FCM continues to remain obligated to retain, in accordance with § 1.31, the required acknowledgment for each of its option customers.

Section 33.7(c) presently provides that an FCM must provide an option customer with all of the information required under paragraph (b) of that rule "[p]rior to the entry into a commodity option transaction. * * *" The Commission understands that some persons have asked whether this would require an FCM to provide information to its option customers before the entry of every option order. The Commission's intention, however, was to ensure that each option customer is fully informed as to the matters discussed in the Disclosure Statement prior to the time he commences trading. The Commission has, therefore, modified that portion of its rule to require the disclosure of this information" [p]rior to the entry of the first commodity option transaction for the account of an option customer. * * * [18] Of course, this rule change does not affect an FCM's obligation to provide new or additional information to its option customers prior to the entry of an order if the information previously provided has become inaccurate or incomplete. *See* § 33.7(f). Although the rules which the Commission is now adopting generally will not become effective until after publication of this **Federal Register** notice, the Commission has instructed its staff not to take enforcement action against any FCM or person soliciting or accepting the order therefor which chooses to conform its disclosure practices to the revised requirements of § 33.7 prior to that time.

IV. Amendments to Existing Regulations

The Commission is adopting minor amendments to the definitions of the terms "associated person" (§ 1.3(aa)), "commodity option transaction" and "commodity option" (§ 1.3(hh)), and "strike price" (§ 1.3(kk)) and, as noted earlier, is also adding a definition of the term "physical" § 1.3(ll)).

The Commission did not receive any comments on the proposed amendments to §§ 1.3(aa) and 1.3(kk) and they are being adopted without change. The Commission similarly did not receive any comments on the proposed amendment to § 1.3(hh), which clarifies that the terms "commodity option transaction" and "commodity option" are not defined by reference to any particular commodity but instead are determined by the descriptions of transactions provided in that paragraph. Section 1.3(hh) is therefore being adopted in the form in which it was proposed.

The Commission is making several changes to § 1.17, the minimum financial rule for futures commission merchants. In particular, the Commission has decided that no "haircut," or safety factor charge, need be taken against an FCM's adjusted net capital for inventory which is currently registered as deliverable on a contract market and is covered by a futures contract or an option on a physical. Section 1.17(c)(5)(ii)(A). Some of the commentators, while acknowledging the basis for the Commission's approach, urged the Commission to afford similar treatment to inventory which is "covered" by options on futures contracts. The Commission believes, however, that subparagraph (B) of § 1.17(c)(5)(ii) already sets forth the appropriate charge in such cases and has therefore adopted the amendment as proposed.

The Commission is also amending paragraphs (c)(1)(iii) and (c)(5)(xi) of § 1.17 to make clear that those provisions are consistent with the definition of "physical" and further, to specify that they apply regardless of whether the option involved is an option

[18] The Commission has further modified paragraphs (c) and (d) of rule so that the limitations, if any, on the transfer of an option customer's account generally need only be provided prior to the commencement of trading and not prior to the entry of each option order.

on a physical or an option on a futures contract.[19] Finally, the Commission is amending §§ 1.17(c)(5)(x) and (c)(5)(x)(D) to make minor, clarifying changes in the terminology of those paragraphs. The Commission did not receive any comments on those portions of its proposal and they are being adopted without change.

Section 1.19 is being amended to delete specific references to various types of option transactions and by inserting the term "commodity option" in their place. No comments were submitted in response to the proposed amendment.

The Commission is adopting, without change, certain technical amendments to § 1.22. One commentator asked whether § 1.22 prohibits the use of customer funds (as defined in § 1.3(gg)) to purchase a commodity for the purpose of covering a granted option. By its terms, § 1.22 imposes obligations upon FCMs (and other depositories of customer funds); it does not, by comparison, preclude an FCM from so using customer funds pursuant to instructions from a customer or option customer.

The Commission is amending § 1.33, which relates to confirmation and monthly statements, to include references to options on physicals. Section 1.33(a) is also being amended to require FCMs to provide to their futures customers a monthly activity statement which contains, among other items, information relating to financial charges and credits during the preceding month; this information is already required to be provided to option customers. One commentator objected to this latter requirement, stating that the Commission should not establish such a rule without specifically identifying all of the items that would have to be included in the monthly statement. The Commission does not agree that any further elaboration is necessary in view of the existing and widespread industry practice of separately enumerating such charges and credits on customers' account statements and in view of the variety of debit and credit items that may be properly posted to a customer's account. The Commission had also proposed to require the itemization of commissions and fees in the monthly statements provided to futures customers. The Commission has, however, received suggestions from certain FCMs that such a requirement would be costly to implement and furthermore, may not be of significant benefit to customers, who already receive this information on a timely basis. The Commission is therefore today publishing a separate notice of proposed rulemaking in the **Federal Register** specifically requesting comments as to whether it should further amend §1.33(a)(1)(iv) to require the inclusion of commissions and fees in the monthly statements provided to futures customers.

Section 1.33(b)(2)(v) presently requires FCMs to provide to their option customers confirmation statements which specify both the expiration date and the final exercise date of the option as well as the final trading date of the contract for future delivery underlying an option on a futures contract. The Commission has become aware, however, that the inclusion of the expiration date and the final trading date of an underlying futures contract may be creating unnecessary operational difficulties for FCMs and, in some instances, causing confusion to option customers. Specifically, the Commission anticipates that many option positions will be offset or allowed to expire, in which cases the final trading date of the underlying futures contract will be of little importance to an option customer. Furthermore, the Commission is concerned that option customers could, in reviewing their confirmation statements, confuse the final exercise date of the option with either the option expiration date or the final futures trading date and inadvertently allow profitable option positions to expire unexercised.

The Commission is, therefore, deleting from § 1.33(b) any requirement that the option expiration date appear on a confirmation statement. By comparison, the Commission believes that information as to the final trading date of the underlying futures contract will be of interest to those option customers who do exercise their option positions. The Commission has accordingly removed from § 1.33(b)(2)(v) the requirement that the final trading date of the underlying futures contract appear in every option confirmation statement and instead, will require that this information be provided only in the event of exercise of an option on a futures contract. *See* § 1.33(b)(3). Although these rule changes will not become effective until thirty days after the date of this **Federal Register** notice, the Commission has instructed its staff not to take enforcement action against any FCM which chooses to conform its confirmation and monthly statements to the revised requirements of § 1.33(b) prior to that time.

No comments were received in response to proposed changes to §§ 1.34, 1.35 and 1.39. The Commission is adopting these amendments without change. The amendments are basically technical in nature and, in general, merely incorporate appropriate references to options on physicals. Section 1.35(e) has also been amended to refer to the non-competitive execution of option transactions in accordance with contract market rules submitted to and approved by the Commission in accordance with § 1.38, thereby conforming the concluding paragraph of § 1.35(e) to earlier amendments to § 1.38.[20]

When it adopted rules to govern the option pilot program, the Commission amended § 1.41(a)(2) to specify, consistent with the prohibition on the margining of option premiums contained in § 33.4(a)(2), that the term "reviewable rule" of a contract market (§ 1.41(a)(2)) included contract market rules relating to the payment or collection of commodity option premiums. 45 FR 54500, 54510 (November 3, 1981). The Commission further indicated that it had instructed its staff to review carefully the exchanges' applications for option contract market designation to ensure that each board of trade or its clearing organization, as applicable, will have in place a system to require the payment of margin by option grantors and, where applicable, their FCMs. *Id.* at 54505. Thus, when the Commission proposed rules to incorporate options on physicals within the scope of the option pilot program, it proposed, consistent with its existing practice, to amend §1.41(a)(2) to specify that the term "reviewable rule" also included any rule of a contract market "relating to the payment or collection of commodity option margin."

A number of commentators, concerned that the Commission intended to involve itself in the setting of levels of margin, maintained, *inter alia*, that the Commission was ill-equipped to act promptly in response to the changes in market conditions that not infrequently require an adjustment in the levels of margin established by the exchanges or their clearing organizations. These commentators further observed that Commission review of option margin levels could result in an anomalous situation

[19] One commentator, noting that the proposed rules referred to the "market value of the physical or futures contract which is the subject of the option," stated that a futures contract does not have a "market value" *per se*. The Commission has used the term "market value" in § 1.17 to mean the settlement price of the underlying futures contract, inclusive of unrealized gains and losses.

[20] 46 FR 54500, 54523 (November 3, 1981); *see* 47 FR 28401, 28406 (June 30, 1982).

whereby futures margin levels could be changed immediately, but option margin levels would remain unadjusted pending review and approval by the Commission. As indicated above, the Commission's proposal was not intended to abrogate the routine determination, by the exchanges, of appropriate levels of margin. Indeed, as the Commission observed when it adopted rules to establish the option pilot program, the characteristics of the futures and option markets are not at present sufficiently different to require the Commissions involvement in the setting of levels of option margin. *Id.* The Commission has accordingly modified the final rule to make clear that rules relating to the actual setting of levels of margin will not be deemed to be reviewable rules.

Many of those commentators further argued that the Commission also lacked authority under the Act to review exchange rules relating to the payment or collection of option margins. The Commission has plenary authority under Section 4c(c) of the Act to adopt such a requirement. Section 5a(12) of the Act (7 U.S.C. 7a(12)) restricts only the Commission's authority to review and approve contract market rules relating to the setting of levels of margin for futures transactions.[21] Indeed, the Commission is authorized under Section 4c(c) to review not only exchange rules relating to the payment and collection of option margins which—together with exchange rules establishing or modifying methods and systems for the payment and collection of option margin—must be submitted to the Commission as reviewable rules under § 1.41(b), but also to review the establishment of actual levels of margin for commodity option transactions.

One contract market, while expressing reservations about the Commission's proposal, stated that it did not object to seeking prior Commission approval of rules relating to the bases on which original margin for option grantors will be determined or to the times within which margin payments must be made.[22] The Commission's rule would encompass primarily these and related subjects [23] but would not, as indicated above, directly involve the Commission in the day-to-day establishment of actual levels of option margins.

Although this amendment to § 1.41 would merely continue the Commission's practice of reviewing the exchanges' methods and systems for the assessment and the payment and collection of option margin,[24] one commentator suggested that the Commission not codify this procedure in its regulations because decisions made by the Commission with respect to option margin procedures could have an effect on margin levels for futures contracts. In this regard, the Commission notes that despite the urgings of certain segments of the industry, it has thus far declined to impose upon the boards of trade a uniform system for the margining of option transactions which would be significantly more intrusive that the limited review contemplated by the rule now being adopted by the Commission. The Commission will, however, continue to assess the operation and effect of these different margining systems in order to determine whether the exchange's divergent approaches to the margining of option transactions are causing unnecessary operational difficulties for FCMs or resulting in confusion as to the obligations of option grantors.[25]

The Commission proposed to amend §§ 1.42–1.44, which relate generally to delivery notices and the storage of commodities in warehouses and similar depositories, to include appropriate references to options on physicals. One commentator stated its belief that those regulations should not apply to any futures or option contract which is settled in cash. The Commission agrees with this commentator and notes that, both as proposed and as now amended, neither § 1.43 nor § 1.44 would apply to such cash-settled contracts. Section 1.42, which requires each contract market to furnish a copy of delivery notices (or, as proposed, notices of exercise of options on physicals) has also been amended to exclude from this requirement those futures contracts and options on physicals which are settled in cash rather than by delivery of the underlying commodity or physical.

The Commission proposed to amend §§ 1.46(a) (3) and (4), which apply generally to the closing out of offsetting long and short positions, to include options on physicals within the provisions of that section. One commentator noted that, as proposed, § 1.46 could be construed to require an FCM to offset an option on a futures contract with an option on a physical where those contracts were executed on the same contract market and had the same strike price and expiration date. The Commission has modified the final regulation accordingly to eliminate this ambiguity.

The Commission is also amending the concluding paragraph of § 1.46(a) which, in addition to requiring the closing out of offsetting long and short positions, requires an FCM to furnish to its customer or option customer "a statement showing the financial results of the transactions involved." The Commission recognizes, however, that while a statement of the financial results is appropriate for futures transactions, where no gain or loss is realized until a position is closed out, similar treatment is unnecessary for options transactions because options confirmation statements will separately specify the amount of the premium paid (in the case of a long options position) or received (in the case of a short options position). Section 1.33(b).[26] As with the amendments the Commission is today making to § 1.33, the Commission has instructed its staff not to take enforcement action against any FCM which chooses, before the effective date of these rule amendments, to conform its options purchase and sale statements to the requirements of the amended rule.

Section 1.46(d)(1), which was adopted as part of the option pilot program regulations, presently provides an exemption from the provisions of that section for "purchases or sales of futures contracts for the purpose of covering the granting of options on a contract market, if such purchases or sales are accompanied by instructions and other evidence that such futures contracts are

[21] Similarly, Section 8a(7) of the Act (7 U.S.C. 12a(7)) would not impede the Commission's authority, in appropriate cases, to alter or supplement exchange rules relating to the levels of option margin or the methods and systems employed by the exchanges for the payment or collection of option margins.

[22] *See* 45 FR 54500, 54505 & n.12 (November 3, 1981.)

[23] For example, the Commission has earlier indicated that it intends to scrutinize especially carefully any exchange application for contract market designation which contemplates the payment of unrealized profits to option purchasers on options that are not offset, exercised or expired. *Id.* at 54505.

[24] To date, the Commission has designated four boards of trade as contract markets for the trading of options on futures contracts and has made substantial progress in the processing of four additional applications for such designation.

[25] On July 2, 1982, the Commission denied a petition by the Coffee, Sugar & Cocoa Exchange, Inc. to modify or repeal Commission rule 33.4(a)(2) which, in effect, prohibits the margining of option premiums. Although it denied that petition, the Commission nonetheless indicated that it would reconsider the issue after the Commission and the industry have gained sufficient experience with the trading of options under the pilot program.

[26] The Commission also is aware that to require the inclusion of this information on the purchase and sale statements required by § 1.46 could create significant operational difficulties for FCMs who would be required, in effect, to credit (or debit) their option customers' accounts not only when the option position was established, but then to debit and recredit (or credit and redebit) the account when the position was offset.

cover for granted options." The Commission proposed to delete that provision when it proposed regulations to implement the trading of options on physicals. As the Commission explained at that time, the exception provided by that paragraph was inappropriate insofar as it referred to futures contracts "covering" options on those contracts. By comparison, the Commission understands the term "cover" to apply only to an option on a physical (and the underlying physical) and to a futures contract (and the underlying commodity).[27] The Commission further indicated in its proposal that "in a situation where § 1.46(d)(1) would apply as presently written, a portion of the overall market position [*i.e.*, the underlying commodity] would necessarily be 'uncovered.' " 47 FR 28401, 28406 (June 30, 1982).

The comments received by the Commission on this proposal suggested that the deletion of this provision would adversely affect the liquidity and pricing efficiency of the option markets. Rather than delete § 1.46(d)(1), the commentators suggested that the Commission instead expand the exemption to permit traders to keep open offsetting option positions and exempt all options on futures transactions from the provisions of § 1.46.

The Commission also requested comments as to whether and under what circumstances it should exempt commercial option traders from the requirements of § 1.46. 47 FR 28401, 28405 (June 30, 1982).[28] The commentators generally supported such an exemption, stating that it would provide a significant opportunity to use options for the reduction of commercial risks.

The Commission has considered these comments and has further analyzed its proposal. While the Commission believes that the positions advanced by some of the commentators are not without merit, the suggested alternatives to the Commission's proposed deletion of paragraph (d)(1) do not allay the Commission's concerns in this area. Specifically, and apart from the reasons already specified by the Commission in its proposal, the Commission is concerned that continuing the exemption presently contained in § 1.46(d)(1) would have the effect of distorting open interest, to the detriment of the Commission and the exchanges in the performance of their respective market surveillance activities and to the disadvantage of users of the markets who rely upon the accuracy of that information in making trading decisions.[29] In this regard, the Commission deems it essential that any exemption for option transactions from the automatic offset provisions of § 1.46 provide specifically for the closing out of these "balanced" positions by open outcry, on the floor of the exchange, and not by transfer trade or some comparable mechanism. The Commission further believes that any such exemption should also provide adequate safeguards to ensure that the trading losses incurred by an option customer on one side of a balanced and otherwise offsetting position are not obscured by the absence of a mandatory close-out provision.

In view of these considerations, the Commission has determined to revise § 1.46(d)(1) to provide what it believes to be a limited but nonetheless appropriate exemption for commercial participants in the option markets. Specifically, the rule which the Commission is now adopting will provide an exemption for option positions held by commercial interests in the underlying commodity where those option positions have been determined by the contract market to be economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise. Thus, the rule which the Commission is now adopting parallels Commission rule 1.61(b) (17 CFR 1.61(b)) and the Commission will allow the contract markets to afford the same treatment to commercial traders under both §§ 1.46 and 1.61.[30] However, in view of the Commission's concerns with respect to the effects on open interest of such offsetting positions, the Commission is further requiring that any such offsetting positions must be closed out by open outcry, on the floor of the contract market, and not by transfer trade or other, similar noncompetitive means.[31]

The Commission also wishes to emphasize that, as amended, § 1.46(d)(1) will apply only to offsetting option positions—*i.e.*, long and short call or long and short put option positions on the same contract market which have the same strike price and expiration date.

The Commission is amending certain of its registration regulations to include references, where appropriate, to commodity option transactions. The Commission did not receive any comments responding to the proposed changes. Specifically, § 3.20 (delegation of authority to deny registration) has been amended to include as a basis for denial of registration certain misdemeanor convictions involving commodity options. Section 3.33 (withdrawal from registration) has been amended to clarify that certain requirements concerning the termination of relationships with customers apply equally to option customers. Similarly, the Commission's interpretation of the "other good cause" provisions of Section 8a(2)(B)(ii) of the Act (7 U.S.C. 12a(2)(B)(ii)), is being amended to include references to commodity options (17 CFR Part 3 Appendix A).

The Commission is amending §§ 4.13, 4.21, 4.22, 4.23, 4.30, 4.31 and 4.32, which relate to the operations and activities of commodity trading advisors ("CTAs") and commodity pool operators ("CPOs"), to make clear that the provisions of the Commission's Part 4 rules apply to all "commodity interest" transactions, whether they involve futures contracts, options, or leverage contracts, and to make other conforming changes. No comments specifically responding to the proposed amendments were submitted and the amendments are being adopted in the form in which they were proposed. In this regard, the Commission wishes to note that corrections to the Disclosure Documents furnished by CPOs and CTAs (*see* §§ 4.21(a) and 4.31(a)) may be made by way of an amended Document or other similar means such as a letter or, in the case of a commodity pool, by the next periodic account statement for the pool. It should be further noted that §§ 4.21 and 4.31 only require the updating of a Disclosure Document if the Document is being used to solicit prospective customers; the Commission will not require that the Documents be amended if no solicitations are being made. If solicitation is resumed, however, the Document must be updated at that time. *See* 46 FR 26004, 26010–11 (May 8, 1981).

The Commission is amending § 32.1 by adding a new paragraph (a), which would delineate the scope of Part 32,

[27] *See generally* Commission rule 1.17(j), 17 CFR 1.17(j).

[28] The exemption from the requirements of § 1.46 for "bona fide hedging transactions" provided by paragraph (d)(2) of that section does not apply to option transactions. 47 FR at 28405; *see* § 1.3(z), 17 CFR 1.3(z).

[29] *See* 45 FR 57141, 57146 (August 27, 1980).

[30] Section 1.61(b), which generally requires each contract market to adopt and submit to the Commission for its approval rules which limit the maximum net long and net short futures and option positions any person may hold or control (*i.e.*, speculative position limits), provides an exception from those exchange-set speculative limits for commercial interests.

[31] Any such open and otherwise offsetting positions must be reported both to the exchange as open interest and, in appropriate cases, to the Commission on the Large Trader Reporting (Series '01) Forms. *See* § 17.00.

and by redesignating other paragraphs of that section accordingly. In addition, § 32.11(b) has been amended to clarify that the ban on certain commodity option transactions contained in § 32.11(a) does not apply to option transactions conducted on or subject to the rules of a contract market in accordance with the provisions of Section 4c(c) of the Act and the regulations promulgated thereunder.

Sections 145.5 and 147.3 are being amended to provide for the generally non-public treatment of information furnished in compliance with the reporting requirements contained in Parts 15–21 of the Commission's regulations.

The Commission is amending § 155.2 to clarify that an exchange's rules on dual trading should prohibit a floor broker from executing an order for his own account or an account in which he has an interest where such execution would involve a purchase or sale of a future or option if the floor broker is holding an executable customer or option customer's order (for the purchase or sale of a future or an option) in the same commodity and that customer or option customer's order would benefit from a market move in the same direction as the broker's trade for his own account or the account in which he has an interest. The Commission is also amending § 155.3 to establish similar requirements for FCMs. Specifically, § 155.3(a)(1) provides generally that each FCM must establish and enforce internal rules, procedures and controls to prevent the FCM's affiliated persons who know of a customer's or option customer's trading activity to transmit for execution orders in the same commodity or in an option on that commodity in advance of the customer's or option customer's order. The Commission did not receive any comments on either of those proposed rule changes.

The Commission proposed to amend certain of its regulations relating to the customer protection and arbitration programs of registered futures associations in order to include references to commodity options. One commentator was concerned that adoption of these changes could be viewed as implicitly mandating the immediate assumption of those responsibilities by the National Futures Association ("NFA"). The Commission, however, does not view the adoption of these amendments as establishing new obligations for NFA and further, does not believe that these amendments will adversely affect the orderly phase-in, by NFA, of customer protection and arbitration programs pursuant to rules which have been approved by the Commission. The Commission is also amending § 180.1, which relates to exchange-sponsored arbitration programs, to include appropriate references to commodity option transactions.

V. Amendments to the Reporting Requirements

The Commission proposed that, with two exceptions, the reporting requirements already established for options on futures be applied to options on physicals. *See* 47 FR 28401, 28407 (June 30, 1982). Those two exceptions concern the frequency with which large option trader reports must be filed and the information that must be contained in those reports. For options on futures contracts, large trader reports must be routinely filed on a weekly basis and only account identification and position information must be reported. 17 CFR 16.02. For options on physicals, the Commission proposed that large trader reports be filed daily and that option exercises, as well as account identification and position information, be reported. *See* 47 FR at 28407. The Commission received five comments on these aspects of the proposed regulation, all of which opposed the adoption of these requirements.

Four of the commentators believed that the requirements for large trader reports for options on physicals should parallel the requirements for options on futures. These commentators all maintained that these additional requirements were unwarranted in view of the added cost to, and operational burden on, the exchanges that would result from these requirements. None of these commentators provided any estimate of these additional costs, however. Another commentator stated "the collection of market surveillance data should be based on a perceived need, * * * not because of a regulation requiring it." With respect to the reporting of exercises of options on physicals, this commentator further argued that the "need for the information would vary widely, depend[ing] on the contract being traded * * * [and] would vary for the same commodity at different times and under different circumstances."

One of the commentators separately recommended that the requirements concerning daily reporting and reporting of option exercises should not apply to options on physicals which are settled in cash. The Commission agrees that when options on physicals are settled in cash, weekly large trader options reports will ordinarily be sufficient and that the reporting of options exercised by large traders may not provide useful information for market surveillance purposes. The reporting requirements for options on physicals which are settled in cash are, therefore, identical to the current reporting requirements for options on futures.

By comparison, the Commission is not persuaded that daily reporting of large option traders' positions and exercises should not be required with respect to options on physicals which call for transfer of ownership of the underlying commodity as the means of exercise. The Commission currently deems it necessary to receive daily reports concerning the positions of large futures traders and the delivery notices issued or stopped by such traders. The Commission anticipates that market surveillance concerns similar to those which the Commission experiences with maturing futures contracts may occur as options on physicals near expiration. The Commission will, however, carefully consider exchange rules, submitted in conjunction with applications for contract market designation for options on physicals, which limit or modify the applicability of the reqirements of § 16.02 in appropriate cases. The Commission has, therefore, revised the reporting requirements contained in § 16.02 for those options on physicals which are not settled in cash to reflect that the Commission may, in its discretion, approve reporting rules for a particular contract market that differ from those specified in § 16.02.[32]

In addition to the measures discussed above, the Commission proposed other amendments to its reporting

[32] One commentator noted that the term "reportable" had been omitted from the specification, in § 16.02, of which option positions should be reported to the Commission by the exchanges. As adopted, this term has been incorporated by the Commission into that rule.

One commentator also objected to the proposed requirement that large option trader reports for options on physicals be provided six weeks in advance of an option's expiration date, a requirement that already applies to options on futures contracts. The Commission traditionally intensifies its surveillance of a futures contract approximately six weeks prior to the last day of trading in order to make a timely assessment of potential problems and to gather any additional information to supplement that which it routinely receives. The Commission presently has no reason to believe that the requirements for surveillance of options on physicals will differ markedly from the requirements for surveillance of maturing futures contracts. For this reason, the Commission has adopted, as proposed, a six-week reporting requirement for large option trader reports. The Commission will, however, review this requirement during the pilot program and, if the situation warrants, reconsider the need for the six-week reporting period.

requirements to conform further the regulations concerning futures and options reporting. These included amendments to § 16.00 to require exchanges to provide information concerning futures positions and transactions of clearing member firms separately for proprietary and customer accounts and to § 16.01 to require the contract markets to report futures transactions and open interest in machine-readable form.

One commentator objected to the requirement that the futures transactions and positions of clearing members be reported separately by proprietary and customer accounts. That commentator noted that this requirement has not previously applied to futures transactions and claimed that the Commission has not demonstrated "* * * that the availability of this data would have been beneficial in the past or could be expected to provide a useful surveillance tool in the future."

Information provided by the exchanges under Part 16 of the Commission's regulations is, however, the only report received by the Commission that indicates, by firm, the distribution of total open contracts and transactions in a given future of a commodity. Moreover, since the Commission has discontinued the routine filing of large trader reports under § 18.00, the Commission receives information concerning the volume of trading by firms only from the reports filed under § 16.00.[33] As such, the reports filed pursuant to that regulation are used routinely to investigate concentrations of positions and the origins of large trading volume. These investigations frequently involve maturing futures contracts and, in the event of sharp price changes, analyses of all futures. Because clearing member firms are generally active traders for their own accounts, the information required under § 16.00, when separated by proprietary and customer accounts, has often been sufficient to provide the Commission with the information it requires and has eliminated the need for further investigation. Where exchanges do not separately identify positions and transactions by proprietary and customer accounts, the Commission has been forced to expend considerable time and resources to obtain the necessary breakdown. Moreover, the Commission notes that the majority of the exchanges already collect from their clearing members and provide to the Commission the information that will now be required under § 16.00. In view of these considerations, the Commission is adopting §16.00 as proposed.

One commentator questioned the need for the amendments to §16.01 which require the exchanges to provide information relating to futures transactions and open interest in machine-readable form. This commentator argued that the Commission should indicate how it would use the new reports since the adoption of this proposal would result in increased expense to the contract markets. The Commission believes this change has been made necessary by the dramatic increase in recent years in the number of contract markets for which the Commission must conduct market surveillance. The corresponding increase in the volume of data that must be analyzed by the Commission has resulted in a corresponding increase in the Commission's reliance on computers and automated data processing to screen and organize that data.

Furthermore, market information which is disseminated to the public by a number of exchanges either is, or can be, produced from the exchanges' own computer systems. In such cases, the cost of providing the information to the Commission in the form specified in the rule is insignificant relative to the cost to the Commission of translating that information into machine-readable form. In this regard, the Commission notes that provisions in its existing rules allow it to consider each exchange on a case-by-case basis in applying similar requirements;[34] this same provision will apply to the amendments to § 16.01. In view of the above considerations, the Commission has determined to adopt § 16.01 as proposed.

No comments were received with respect to the remainder of the proposed amendments to §§ 15.00, 15.05, 16.01, 16.04, 18.00, 18.01, 18.04, 18.05, and 21.02. Most of these proposals were technical amendments intended to add conforming references to options on physicals, to simplify or clarify existing regulations, and to reduce the number of reporting forms that must be filed with the Commission. Accordingly, the Commission is adopting these amendments as proposed.

VI. Related Matters

When the Commission proposed regulations to permit and govern the trading of options on physicals on domestic exchanges, the Chairman certified, on behalf of the Commission and pursuant to the Regulatory Flexibility Act, that if the regulations were promulgated as proposed, there would not be a significant economic impact on a substantial number of small entities. In this connection, the Commission noted its previous determination that contract markets, registered futures commission merchants, registered commodity pool operators, and large traders are not "small entities" for purposes of that Act (47 FR 18618 (April 30, 1982)) and that the requirements of the Regulatory Flexibility Act therefore did not apply to those entities. The Commission further noted that those provisions of the proposed regulations which affected commodity trading advisors merely would amend §§4.30–4.32 to include, where appropriate, references to "commodity interests" [35] rather than references solely to futures trading, and hence were technical in nature. Thus, the Commission expressed its belief that, if adopted, §§ 4.30–4.32 would not have a significant economic impact on commodity trading advisors. As stated above, the Commission did not receive any comments responsive to the proposed amendments to §§ 4.30–4.32 and is adopting them as proposed. The Commission also did not receive any comments on its proposed Regulatory Flexibility Act certification.

For the reasons indicated above, and pursuant to Section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

List of Subjects

17 CFR Part 1

Commodity exchanges, Financial requirements, Commodity exchange designation procedures, Commodity exchange rules, Reporting and recordkeeping requirements, Records, Customer protection, Definitions.

17 CFR Part 3

Withdrawal from registration, Denial of registration.

17 CFR Part 4

Commodity pool operators, Commodity trading advisors, Disclosure document, Records.

17 CFR Part 15

Reporting and recordkeeping requirements, Foreign brokers, Foreign traders.

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[33] 46 FR 59960 (December 8, 1981).

[34] 46 FR 54500, 54514 (November 3, 1981).

[35] Commission rule 4.10(a) defines the term "commodity interest" to include futures, options, and leverage transactions. 17 CFR 4.10(a).

17 CFR Part 16

Commodity exchange reports, Reporting and recordkeeping requirements.

17 CFR Part 18

Reporting and recordkeeping requirements.

17 CFR Part 21

Reporting and recordkeeping requirements, Special calls for information.

17 CFR Part 32

Commodity options, Fraud.

17 CFR Part 33

Commodity options, Commodity exchange designation procedures, Fraud, Risk disclosure statement.

17 CFR Part 145

Records, Freedom of information.

17 CFR Part 147

Commission meetings, Sunshine Act.

17 CFR Part 155

Commodity exchange trading standards, Futures commission merchant trading standards.

17 CFR Part 170

Futures Association.

17 CFR Part 180

Arbitrations, Claims.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 2(a)(1), 4c(a), 4c(b), 4c(c), 4c(d), 4d, 4f, 4g, 4k, 4m, 4n, 8a, 15 and 17 thereof, 7 U.S.C. 2 and 4, 6c(a), 6c(b), 6c(c), 6c(d), 6d, 6f, 6g, 6k, 6m, 6n, 12a, 19 and 21, and pursuant to the authority contained in 5 U.S.C. 552 and 552b, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. Section 1.3 is amended by revising paragraphs (aa), (hh) and (kk), and by adding a new paragraph (ll) to read as follows:

§ 1.3 Definitions.

* * * * *

(aa) *Associated person.* This term means any natural person who (as provided in Section 4k of the Act) is associated with a futures commission merchant or with an agent of a futures commission merchant as a partner, officer, or employee (or any person occupying a similar status or performing similar functions), in any capacity which involves (1) the solicitation or acceptance of customers' or option customers' orders (other than in a clerical capacity) or (2) the supervision of any person or persons so engaged.

* * * * *

(hh) *Commodity option transaction; commodity option.* These terms each mean any transaction or agreement in interstate commerce which is or is held out to be of the character of, or is commonly known to the trade as, an "option," "privilege," "indemnity," "bid," "offer," "call," "put," "advance guaranty," or "decline guaranty," and which is subject to regulation under the Act and these regulations.

* * * * *

(kk) *Strike price.* This term means the price, per unit, at which a person may purchase or sell the contract of sale of a commodity for future delivery or the physical which is the subject of a commodity option: *Provided,* That for purposes of § 1.17, the term "strike price" means the total price at which a person may purchase or sell the contract of sale of a commodity for future delivery or the physical which is the subject of a commodity option *(i.e.,* price per unit times the number of units).

(ll) *Physical.* This term means any good, article, service, right or interest upon which a coimmodity option may be traded in accordance with the Act and these regulations.

2. Section 1.17 is amended by revising paragraphs (c)(1)(iii), (c)(5)(ii)(A), (c)(5)(x), (c)(5)(x)(D) and (c)(5)(xi) to read as follows: §1.17 Minimum financial requirements—futures commission merchants.

* * * * *

(c) * * *

(1) * * *

(iii) The value attributed to any commodity option which is not traded on a contract market shall be the difference between the option's strike price and the market value for the physical or futures contract which is the subject of the option. In the case of a call commodity option which is not traded on a contract market, if the market value for the physical or futures contract which is the subject of the option is less than the strike price of the option, it shall be given no value. In the case of a put commodity option which is not traded on a contract market, if the market value for the physical or futures contract which is the subject of the option is more than the strike price of the option, it shall be given no value; and

* * * * *

(5) * * *

(ii) * * *

(A) Inventory which is currently registered as deliverable on a contract market and covered by an open futures contract or by a commodity option on a physical.—No charge.

* * * * *

(x) In the case of open futures contracts and granted (sold) commodity options held in proprietary accounts carried by the applicant or registrant which are not covered by a position held by the applicant or registrant or which are not the result of a "changer trade" made in accordance with the rules of a contract market:

* * * * *

(D) For open contracts or granted (sold) commodity options for which there are no applicable maintenance margin requirements, 200 percent of the applicable initial margin requirement: *Provided,* the equity in any such proprietary account shall reduce the deduction required by this paragraph (c)(5)(x) if the such equity is not otherwise includable in adjusted net capital;

(xi) In the case of an applicant or registrant which is a purchaser of a commodity option not traded on a contract market which has value and such value is used to increase adjusted net capital, ten percent of the market value of the physical or futures contract which is the subject of such option but in no event more than the value attributed to such option;

* * * * *

3. Section 1.19 is revised to read as follows:

§ 1.19 Prohibited trading in certain options.

No futures commission merchant may make, underwrite, issue, or otherwise assume any financial responsibility for the fulfillment of, any commodity option except for commodity options traded on or subject to the rules of a contract market in accordance with the requirements of Part 33 of this chapter.

4. Section 1.22 is revised to read as follows:

§ 1.22 Use of customer funds restricted.

No futures commission merchant shall use, or permit the use of, the customer funds of one commodity and/or option customer to purchase, margin, or settle the trades, contracts, or commodity options of, or to secure or extend the credit of, any person other than such customer or option customer. Customer funds shall not be used to carry trades or positions of the same commodity and/or option customer other than in commodities or commodity options traded throught the facilities of a contract market.

5. Section 1.33 is amended by adding paragraph (a)(1)(iv), by revising paragraphs (a)(2)(i), (a)(2)(ii), (b)(2)(iv), (b)(2)(v), (b)(3), by removing and reserving paragraph (d)(2), and by revising paragraph (e) to read as follows:

§ 1.33 Monthly and confirmation statements.

(a) * * *

(1) * * *

(iv) A detailed accounting of all financial charges and credits to the commodity customer's account during the monthly reporting period, including all customer funds received from or disbursed to the commodity customer and realized profits and losses; and

(2) For each option customer—

(i) All commodity options purchased, sold, exercised, or expired during the monthly reporting period, identified by underlying futures contract or underlying physical, strike price, transaction date, and expiration date;

(ii) The open commodity option positions carried for the option customer as of the end of the monthly reporting period, identified by underlying futures contract or underlying physical, strike price, transaction date, and expiration date;

* * * * *

(b) * * *

(2) * * *

(iv) The underlying futures contract or underlying physical;

(v) The final exercise date of the commodity option purchased or sold; and

* * * * *

(3) To each option customer, upon the expiration or exercise of any commodity option, a written confirmation statement thereof, which statement shall include the date of such occurrence, a description of the option involved, and, in the case of exercise, the details of the futures or physical position which resulted therefrom including, if applicable, the final trading date of the contract for future delivery underlying the option.

* * * * *

(d) * * *

(2) [Reserved]

* * * * *

(e) *Recordkeeping.* Each futures commission merchant shall retain, in accordance with § 1.31, a copy of each monthly statement and confirmation required by this § 1.33.

6. Section 1.34 is amended by revising paragraph (b) to read as follows:

§ 1.34 Monthly record, "point balance."

* * * * *

(b) Each futures commission merchant shall prepare, and retain in accordance with the requirements of § 1.31, a listing in which all open commodity option positions carried for option customers are marked to the market. Such listing shall be prepared as of the last business day of each month, or as of any regular monthly date selected, and shall be by put or by call, by underlying contract for future delivery (by delivery month) or underlying physical (by option expiration date), and by strike price.

7. Section 1.35 is amended by revising paragraphs (b)(2)(ii), (b)(3)(ii), (d) and (e) to read as follows:

§ 1.35 Records of cash commodity, futures, and option transactions.

* * * * *

(b) * * *

(2) * * *

(ii) All commodity option transactions executed for such account, including the date, whether the transaction involved a put or call, expiration date, quantity, underlying contract for future delivery or underlying physical, strike price, and details of the purchase price of the option, including premium, mark-up, commission and fees; and

(3) * * *

(ii) All commodity option transactions executed on that day, including the date, whether the transaction involved a put or call, expiration date, quantity, underlying contract for future delivery or underlying physical, strike price, details of the purchase price of the option, incuding premium, mark-up, commission and fees, and the person for whom such transaction was made.

* * * * *

(d) *Members of contract markets.* Each member of a contract market who, in the place provided by the contract market for the meeting of persons similarly engaged, executes purchases or sales of any commodity for future delivery or commodity option on or subject to the rules of such contract market, shall prepare regularly and promptly a trading card or record showing such purchases and sales. Such trading card or record shall show his own name, the name of the clearing member, transaction date, time period (as described in paragraph (g) of this section), quantity, and, as applicable, underlying commodity, contract for future delivery or physical, price or premium, delivery month or expiration date, whether the transaction involved a put or a call, and strike price. Such trading card or record shall also clearly identify the opposite floor broker or floor trader with whom such transaction was executed, and the opposite clearing member (if, in accordance with the rules or practice of the contract market, such opposite clearing member is made known to him).

(e) *Contract markets.* Each contract market shall maintain or cause to be maintained by its clearing organization a single record which shall show for each futures or option trade: the transaction date, time period (as described in paragraph (g) of this section), quantity, and, as applicable, underlying commodity, contract for future delivery or physical, price or premium, delivery month or expiration date, whether the transaction involved a put or a call, strike price, floor broker of floor trader buying, clearing member buying, floor broker or floor trader selling, clearing member selling, and symbols indicating the buying and selling customer or option customer types. The customer and option customer type indicators shall show, with respect to each person executing the trade whether such person:

(1) Was trading for his own account;

(2) Was trading for his clearing member's house account;

(3) Was trading for another member present on the exchange floor, or an account controlled by such other member; or

(4) Was trading for any other type of customer or option customer.

The record required by this paragraph (e) shall also show, by appropriate and uniform symbols, any transaction which is made non-competitively in accordance with written rules of the contract market which have been submitted to and approved by the Commission in accordance with § 1.38, and trades cleared on dates other than the date of execution. Except as otherwise approved by the Commission for good cause shown, the record required by this paragraph (e) shall be maintained in a format and coding structure approved by the Commission (i) in hard copy or on microfilm as specified in § 1.31 and (ii) for 60 days in computer-readable form on compatible magnetic tapes or discs.

* * * * *

8. Section 1.39 is amended by revising paragraph (a) to read as follows:

§ 1.39 Simultaneous buying and selling orders of different principals; execution of, for and between principals.

(a) *Conditions and requirements.* A member of a contract market who shall have in hand at the same time both buying and selling orders of different principals for the same commodity for future delivery in the same delivery month or the same option (both puts or both calls, with the same underlying contract for future delivery or the same underlying physical, expiration date and strike price) may execute such orders for and directly between such principals at the market price, if in conformity with written rules of such contract market which have been approved by the Commission, and:

(1)(i) When trading is conducted in a trading pit or ring, such orders are first offered openly and competitively by open outcry in such trading pit or ring (A) by both bidding and offering at the same price, and neither such bid nor offer is accepted, or (B) by bidding and offering to a point where such offer is higher than such bid by not more than the minimum permissible price fluctuation applicable to such futures contract or commodity option on such contract market, and neither such bid nor offer is accepted; or

(ii) When in nonpit trading in contracts of sale for future delivery, bids and offers are posted on a board, such member (A) pursuant to such buying order posts a bid on the board and, incident to the execution of such selling order, accepts such bid and all other bids posted at prices equal to or higher than the bid posted by him, or (B) pursuant to such selling order posts an offer on the board and, incident to the execution of such buying order, accepts such offer and all other offers posted at prices equal to or lower than the offer posted by him;

(2) Such member executes such orders in the presence of an official representative of such contract market designated to observe such transactions and, by appropriate descriptive words or symbol, clearly identifies all such transactions on his trading card or other similar record, made at the time of execution, and notes thereon the exact time of execution and promptly presents said record to such official representative for verification and initialing;

(3) Such contract market keeps a record in permanent form of each such transaction showing the transaction date, by whom executed, the exact time of execution, quantity, and, as applicable, underlying commodity, contract for future delivery or physical, price or premium, whether a put or a call, and strike price; and

(4) Neither the futures commission merchant receiving nor the member executing such orders has any interest therein, directly or indirectly, except as a fiduciary.

* * * * *

9. Section 1.41 is amended by revising paragraph (a)(2) to read as follows:

§ 1.41 Contract market rules; submission of rules to Commission; exemption of temporary emergency rules and certain operational and administrative rules; emergencies.

(a) * * *

(2) The term "reviewable rule" of a contract market means any rule of a contract market which relates to terms and conditions of contracts of sale of a commodity for future delivery or of commodity option transactions to be executed on or subject to the rules of such contract market or relates to other trading requirements except those relating to the setting of levels of margin: *Provided,* That any rule of a contract market relating to the payment or collection of commodity option margin or premiums shall be a reviewable rule.

* * * * *

10. Section 1.42 is amended by revising paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 1.42 Delivery notice; filing of copy.

(a) Each contract market shall furnish or cause to be furnished promptly to the Commission a copy of each notice of delivery issued by any member thereof covering the delivery of any commodity on a futures contract or on a commodity option made on or subject to the rules of such contract market, and shall also furnish or cause to be furnished promptly to the Commission a record of all endorsements of the original notice of delivery shown in the order in which such endorsements were made.

* * * * *

(c) For the purposes of this section, the term "delivery" includes the exercise of a commodity option on a physical but does not include any futures contract or option on a physical which is settled in cash rather than by delivery of the underlying commodity or underlying physicals.

11. Section 1.43 is revised to read as follows:

§ 1.43 Information required concerning warehouses, depositories, and other similar entities.

Each contract market shall file with the Commission a list of all warehouses, depositories and other similar entities in which or out of which commodities are deliverable in satisfaction of futures contracts or options on physicals made on or subject to the rules of such contract market, which list shall show the name, location, and storage capacity of each such warehouse, depository or other similar entity, together with the name and business address of the operator thereof. The Commission shall be kept currently advised of all changes affecting such information. Each contract market shall require the operator of such warehouse, depository or other similar entity to furnish, upon call by the Commission, a schedule of storage charges, handling charges, and the annual fire insurance rate applicable to such warehouse, depository or other similar entity.

12. Section 1.44 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.44 Records and reports of warehouses, depositories, and other similar entities; visitation of premises.

Each contract market shall require the operators of warehouses, depositories and other similar entities whose receipts are deliverable in satisfaction of commodity futures contracts or options on physicals made on or subject to the rules of such contract market:

(a) To keep records showing the stocks of each commodity traded for future delivery or upon which option contracts are traded on such contract market in store in such warehouses, depositories and other similar entities by kinds, by classes, and by grades, if stored under conditions requiring such designation or identification, and including also lots and parcels stored specially or separately or in specially leased space of the warehouse, depository or other similar entity;

(b) Upon call from the Commission, to report the stocks of commodities in such warehouses, depositories and other similar entities and to furnish information concerning stocks of each commodity traded for future delivery or upon which option contracts are traded on such contract market about to be transferred or in the process of being transferred or otherwise moved into or out of such warehouses, depositories and other similar entities, as well as any other information concerning commodities stored in such warehouse, depositories and other similar entities and which are or may be available for delivery on futures contracts or options on physicals; and

* * * * *

13. Section 1.46 is amended by revising paragraphs (a)(3), (a)(4), the closing text of paragraph (a), and paragraph (d)(1), to read as follows:

§ 1.46 Application and closing out of offsetting long and short positions.

(a) * * *

(3) Purchases a put or call option for the account of any option customer

when the account of such option customer at the time of such purchase has a short put or call option position with the same underlying futures contract or same underlying physical, strike price, expiration date and contract market as that purchased; or

(4) Sells a put or call option for the account of any option customer when the account of such option customer at the time of such sale has a long put or call option position with the same underlying futures contract or same underlying physical, strike price, expiration date and contract market as that sold

shall on the same day apply such purchase or sale against such previously held short or long futures or option position, as the case may be, and shall, for futures transactions, promptly furnish such customer a statement showing the financial result of the transactions involved.

* * * * *

(d) * * *

(1) Purchases or sales of commodity options held by commercial interests in the underlying commodity, where such purchases or sales are determined by the contract market to be economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise pursuant to rules of the contract market which have been adopted in accordance with the requirements of § 1.61(b) and approved by the Commission pursuant to Section 5a(12) of the Act; *Provided*, that no contract market or futures commission merchant shall permit such option positions to be offset other than by open and competitive execution in the trading pit or ring provided by the contract market, during the regular hours prescribed by the contract market for trading in such commodity option.

* * * * *

PART 3—REGISTRATION

14. The authority citation for Part 3 is revised to read as follows:

Authority: 7 U.S.C. 2, 4, 4a, 6c, 6d, 6e, 6f, 6k, 6m, 6n, 6p and 12a.

15. Section 3.20 is amended by revising paragraphs (a)(1)(ii) and (a)(1)(iii) to read as follows:

§ 3.20 Delegation of authority to deny registration.

(a) * * *

(1) * * *

(ii) Within ten years preceding the filing of the application has been convicted of a misdemeanor which (A) involves any transaction or advice concerning any commodity, contract for future delivery of a commodity, commodity option, or security; (B) arises out of the conduct of the business of a futures commission merchant, associated person, floor broker, commodity trading advisor, commodity pool operator, securities broker, securities dealer, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or employee or affiliated person of any of the foregoing; or (C) involves embezzlement, defalcation, fraudulent conversion, misappropriation of funds, securities or other property, forgery, counterfeiting, false pretenses, gambling, or similar crimes reflecting upon the ability of the applicant, if registered, faithfully to discharge the fiduciary duties imposed by the Act; or

(iii) At the time of the application, is permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction, or is prohibited by agreement or settlement with the Commission or the Securities and Exchange Commission, or any State agency or governmental body, (A) from acting as a commodity trading advisor, commodity pool operator, futures commission merchant, floor broker, securities broker or dealer, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or as an associated or affiliated person or employee of any of the foregoing, or (B) from engaging in or continuing any conduct or practice in connection with any such activity or involving any transaction or advice concerning commodities, contracts for future delivery of commodities, commodity options, or securities; or

* * * * *

16. Section 3.33 is amended by revising paragraphs (b)(7)(i), (b)(7)(ii), (b)(7)(iii), and (b)(7)(v) to read as follows:

§ 3.33 Withdrawal from registration.

* * * * *

(b) * * *

(7) * * *

(i) That all customer or option customer agreements, if any, have been terminated;

(ii) That all customer or option customer positions, if any, have been transferred on behalf of customers or option customers or closed;

(iii) That all customer or option customer cash balances, securities, or other property, if any, have been transferred on behalf of customers or option customers or returned, and that there are no obligations to customers or option customers outstanding;

* * * * *

(v) The nature and extent of any pending customer, option customer or commodity pool participant claims against the registrant, and, to the best of the registrant's knowledge and belief, the nature and extent of any anticipated or threatened customer, option customer or commodity pool participant claims against the registrant.

* * * * *

17. Appendix A is amended by revising paragraphs (1), (3) and (4) to read as follows:

* * * * *

(1) The operations of such person disrupt or would tend to disrupt orderly market conditions, or cause or would tend to cause sudden or unreasonable fluctuations or unwarranted changes in the price of commodities or contracts for future delivery of commodities or commodity options.

* * * * *

(3) Such person has, within ten years preceding the filing of the application for registration, been convicted of a misdemeanor which (a) involves any transactions or advice concerning any commodity, contract for future delivery of a commodity, commodity option or security; or (b) arises out of conduct of the business of a futures commission merchant, associated person, floor broker, commodity trading advisor, commodity pool operator, securities broker, securities dealer, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing; or (c) involves embezzlement, defalcation, fraudulent conversion, misappropriation of funds, securities or other property, forgery, counterfeiting, false pretenses, gambling, or similar crimes indicating a lack of high ethical standards or unreliability in maintaining a fiduciary relationship.

(4) Such person is permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction, or by agreement of settlement to which the Commission, the Securities and Exchange Commission, or any State agency or governmental body is a party, from (a) acting as a futures commission merchant, associated person, floor broker, commodity trading advisor, commodity pool operator, securities broker, securities dealer, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company or employee or affiliated person of any of the foregoing or (b) engaging in or continuing any conduct or practice in connection with any such activity or involving any transaction or advice concerning commodities, contracts for future delivery of commodities, commodity options, or securities.

* * * * *

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

18. Section 4.13 is amended by revising paragraph (b)(2)(i)(B) to read as follows:

§ 4.13 Exemption from registration as a commodity pool operator.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) Clearly show on such statement, or on an accompanying supplemental statement, the net profit or loss on all commodity interests closed since the date of the previous statement; and

* * * * *

19. Section 4.21 is amended by revising paragraphs (a)(1)(vi) and (a)(1)(vii), by adding a new paragraph (a)(1)(viii), and by revising paragraphs (a)(9)(ii), (a)(9)(iii) and (a)(17)(i) to read as follows:

§ 4.21 Disclosure to prospective pool participants.

(a) * * *

(1) * * *

(vi) The name of the person who will make the trading decisions for the pool;

(vii) If known, the name of the futures commission merchant through which the pool will execute its trades; and

(viii) The types of commodity interests the commodity pool operator intends that the pool will trade, with a description of any restrictions or limitations on such trading established by the commodity pool operator.

* * * * *

(9) * * *

(ii) The form in which pool funds not deposited as margin or paid as premiums will be held after the commencement of trading by the pool. If those funds will be held in assets other than cash, the pool operator must disclose:

* * * * *

(iii) If pool funds not deposited as margin or paid as premiums will be held outside of the United States, its territories or possessions, the pool operator must specify where those funds will be held.

* * * * *

(17)(i) The following Risk Disclosure Statement, to be prominently disclosed as, and the only language on, the first page of the Disclosure Document:

RISK DISCLOSURE STATEMENT

YOU SHOULD CAREFULLY CONSIDER WHETHER YOUR FINANCIAL CONDITION PERMITS YOU TO PARTICIPATE IN A COMMODITY POOL. YOU MAY LOSE A SUBSTANTIAL PORTION OR EVEN ALL OF THE MONEY YOU PLACE IN THE POOL.

IN CONSIDERING WHETHER TO PARTICIPATE IN A COMMODITY POOL, YOU SHOULD BE AWARE THAT TRADING COMMODITIES CAN QUICKLY LEAD TO LARGE LOSSES AS WELL AS GAINS. SUCH TRADING LOSSES CAN SHARPLY REDUCE THE NET ASSET VALUE OF THE POOL AND CONSEQUENTLY THE VALUE OF YOUR INTEREST IN THE POOL. ALSO, MARKET CONDITIONS MAY MAKE IT DIFFICULT OR IMPOSSIBLE FOR THE POOL TO LIQUIDATE A POSITION.

IN SOME CASES, COMMODITY POOLS ARE SUBJECT TO SUBSTANTIAL CHARGES FOR MANAGEMENT, ADVISORY AND BROKERAGE FEES. IT MAY BE NECESSARY FOR THOSE POOLS THAT ARE SUBJECT TO THESE CHARGES TO MAKE SUBSTANTIAL TRADING PROFITS TO AVOID DEPLETION OR EXHAUSTION OF THEIR ASSETS. THIS DISCLOSURE DOCUMENT CONTAINS A COMPLETE DESCRIPTION OF EACH EXPENSE TO BE CHARGED THIS POOL.

THIS BRIEF STATEMENT CANNOT DISCLOSE ALL THE RISKS AND OTHER SIGNIFICANT ASPECTS OF PARTICIPATING IN A COMMODITY POOL. YOU SHOULD THEREFORE CAREFULLY STUDY THIS DISCLOSURE DOCUMENT AND COMMODITY TRADING BEFORE YOU DECIDE TO PARTICIPATE IN A COMMODITY POOL.

* * * * *

20. Section 4.22 is amended by revising paragraph (a)(1)(iii) to read as follows:

§ 4.22 Reporting to pool participants.

(a) * * *

(1) * * *

(iii) The total amount of net gain or loss from all other transactions in which the pool engaged during the reporting period, including interest and dividends earned on funds not paid as premiums or used to margin the pool's commodity interest positions;

* * * * *

21. Section 4.23 is amended by revising paragraphs (a)(1), (a)(7), (b)(1) and (b)(2) to read as follows:

§ 4.23 Recordkeeping.

* * * * *

(a) * * *

(1) An itemized daily record of each commodity interest transaction of the pool, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, the futures commission merchant carrying the account, whether the interest was purchased, sold, exercised, or expired, and the gain or loss realized.

* * * * *

(7) Copies of each confirmation of a commodity interest transaction of the pool, each purchase and sale statement and each monthly statement for the pool received from a futures commission merchant.

* * * * *

(b) * * *

(1) An itemized daily record of each commodity interest transaction of the commodity pool operator and each principal thereof, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, the futures commission merchant carrying the account, whether the interest was purchased, sold, exercised, or expired, and the gain or loss realized.

(2) Each confirmation of a commodity interest transaction, each purchase and sale statement and each monthly statement furnished by a futures commission merchant to (i) the commodity pool operator relating to a personal account of the pool operator, and (ii) each principal of the pool operator relating to a personal account of such principal.

* * * * *

22. Section 4.30 is revised to read as follows:

§ 4.30 Prohibited activities.

No commodity trading advisor may solicit, accept or receive from an existing or prospective client funds, securities or other property in the trading advisor's name (or extend credit in lieu thereof) to purchase, margin, guarantee or secure any commodity interest of the client; *Provided, however,* That this section shall not apply to a futures commission merchant that is registered as such under the Act or to a leverage transaction merchant that is registered as a commodity trading advisor under the Act.

23. Section 4.31 is amended by revising paragraphs (a)(1)(iii) and (a)(1)(iv)(B), by adding a new paragraph (a)(1)(v), and by revising paragraph (a)(8)(i) to read as follows:

§ 4.31 Disclosure to prospective clients.

(a) * * *

(1) * * *

(iii) A description of the trading program;

(iv) * * *

(B) If the client is free to choose the futures commission merchant with which it will maintain its account, the trading advisor must make a statement to that effect; and

(v) The types of commodity interests the commodity trading advisor intends to trade, with a description of any restrictions or limitations on such trading established by the commodity trading advisor.

* * * * *

(8)(i) The following Risk Disclosure Statement to be prominently disclosed as, and the only language on, the first page of the Disclosure Document:

RISK DISCLOSURE STATEMENT

THE RISK OF LOSS IN TRADING COMMODITIES CAN BE SUBSTANTIAL. YOU SHOULD THEREFORE CAREFULLY CONSIDER WHETHER SUCH TRADING IS SUITABLE FOR YOU IN LIGHT OF YOUR FINANCIAL CONDITION. IN CONSIDERING WHETHER TO TRADE OR TO AUTHORIZE SOMEONE ELSE TO TRADE FOR YOU, YOU SHOULD BE AWARE OF THE FOLLOWING:

(1) IF YOU PURCHASE A COMMODITY OPTION YOU MAY SUSTAIN A TOTAL LOSS OF THE PREMIMUM AND OF ALL TRANSACTION COSTS.

(2) IF YOU PURCHASE OR SELL A COMMODITY FUTURE OR SELL A COMMODITY OPTION YOU MAY SUSTAIN A TOTAL LOSS OF THE INITIAL MARGIN FUNDS AND ANY ADDITIONAL FUNDS THAT YOU DEPOSIT WITH YOUR BROKER TO ESTABLISH OR MAINTAIN YOUR POSITION. IF THE MARKET MOVES AGAINST YOUR POSITION, YOU MAY BE CALLED UPON BY YOUR BROKER TO DEPOSIT A SUBSTANTIAL AMOUNT OF ADDITIONAL MARGIN FUNDS, ON SHORT NOTICE, IN ORDER TO MAINTAIN YOUR POSITION. IF YOU DO NOT PROVIDE THE REQUIRED FUNDS WITHIN THE PRESCRIBED TIME, YOUR POSITION MAY BE LIQUIDATED AT A LOSS, AND YOU WILL BE LIABLE FOR ANY RESULTING DEFICIT IN YOUR ACCOUNT.

(3) UNDER CERTAIN MARKET CONDITIONS, YOU MAY FIND IT DIFFICULT OR IMPOSSIBLE TO LIQUIDATE A POSITION. THIS CAN OCCUR, FOR EXAMPLE, WHEN THE MARKET MAKES A "LIMIT MOVE."

(4) THE PLACEMENT OF CONTINGENT ORDERS BY YOU OR YOUR TRADING ADVISOR, SUCH AS A "STOP-LOSS" OR "STOP-LIMIT" ORDER, WILL NOT NECESSARILY LIMIT YOUR LOSSES TO THE INTENDED AMOUNTS, SINCE MARKET CONDITIONS MAY MAKE IT IMPOSSIBLE TO EXECUTE SUCH ORDERS.

(5) A "SPREAD" POSITION MAY NOT BE LESS RISKY THAN A SIMPLE "LONG" OR "SHORT" POSITION.

(6) THE HIGH DEGREE OF LEVERAGE THAT IS OFTEN OBTAINABLE IN COMMODITY TRADING CAN WORK AGAINST YOU AS WELL AS FOR YOU. THE USE OF LEVERAGE CAN LEAD TO LARGE LOSSES AS WELL AS GAINS.

IN SOME CASES, MANAGED COMMODITY ACCOUNTS ARE SUBJECT TO SUBSTANTIAL CHARGES FOR MANAGEMENT AND ADVISORY FEES. IT MAY BE NECESSARY FOR THOSE ACCOUNTS THAT ARE SUBJECT TO THESE CHARGES TO MAKE SUBSTANTIAL TRADING PROFITS TO AVOID DEPLETION OR EXHAUSTION OF THEIR ASSETS. THIS DISCLOSURE DOCUMENT CONTAINS A COMPLETE DESCRIPTION OF EACH FEE TO BE CHARGED TO YOUR ACCOUNT BY THE COMMODITY TRADING ADVISOR.

THIS BRIEF STATEMENT CANNOT DISCLOSE ALL THE RISKS AND OTHER SIGNIFICANT ASPECTS OF THE COMMODITY MARKETS. YOU SHOULD THEREFORE CAREFULLY STUDY THIS DISCLOSURE DOCUMENT AND COMMODITY TRADING BEFORE YOU TRADE.

* * * * *

24. Section 4.32 is amended by revising paragraphs (a)(6), (b)(1) and (b)(2) to read as follows:

§ 4.32 Recordkeeping.

(a) * * *

(6) Copies of each confirmation of a commodity interest transaction, each purchase and sale statement and each monthly statement received from a futures commission merchant.

* * * * *

(b) * * *

(1) An itemized daily record of each commodity interest transaction of the commodity trading advisor and each principal thereof, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, the futures commission merchant carrying the account, whether the interest was purchased, sold, exercised, or expired, and the gain or loss realized.

(2) Each confirmation of a commodity interest transaction, each purchase and sale statement and each monthly statement furnished by a futures commission merchant to (i) the commodity trading advisor relating to a personal account of the trading advisor, and (ii) each principal of the trading advisor relating to a personal account of such principal.

* * * * *

PART 15—REPORTS—GENERAL PROVISIONS

25. Section 15.00 is amended by revising paragraph (b)(2) and redesignating paragraph (b)(2) as paragraph (b)(2)(i), by adding paragraph (b)(2)(ii), and by revising paragraphs (g) and (h) to read as follows:

§ 15.00 Definition of terms used in Parts 15 to 21 of this chapter.

* * * * *

(b) * * *

(2) For purposes of reports regarding commodity options—

(i) For reports specified in Part 16 and in § 17.01 of this chapter, any open contract position on any one contract market in the put option or separately in the call option of a specified option expiration date, which is carried on the books of any one futures commission merchant or foreign broker or which is held by a member of a contract market, and which, at the close of the market on any business day, equals or exceeds 25 options on futures contracts or 25 options on physicals, except as otherwise approved by the Commission.

(ii) For reports specified in §§ 18.00 and 18.04 of this chapter, and for recordkeeping requirements specified in § 18.05 of this chapter, 25 or more open options on futures contracts or 25 or more open options on physicals on any one contract market in a put option or separately in a call option of a specified option expiration date.

* * * * *

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

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

* * * * *

26. Section 15.01 is amended by revising paragraph (c) to read as follows:

§ 15.01 Persons required to report.

* * * * *

(c) Traders who hold or control reportable positions as specified in Part 18 of this chapter.

* * * * *

27. Section 15.02 is revised to read as follows:

§ 15.02 Reporting forms.

Forms on which to report may be obtained from any office of the Commission. Forms to be used for the filing of reports are listed below, and persons required to file these forms may be determined by referring to the rule listed in the column opposite the form number.

Form No.	Title	Rule
40	Statement of Reporting Trader	18.04
102	Identification of Special Accounts	17.01
103	Large Trader Report	18.00
Series 04	Cash Positions of Traders in Specified Commodities.	19.00
	204—Grains (including Oilseeds)	
	304—Cotton	
	504—Eggs	
	604—Potatoes	
Series 01	Positions of Special Accounts on or Subject to the Rules of Specified Markets.	17.00
	01-60—Board of Trade of the City of Chicago.	
	01-61—Board of Trade of the City of Kansas City, Missouri, Inc.	
	01-62—Minneapolis Grain Exchange	
	01-63—MidAmerica Commodity Exchange.	
	01-64—Chicago Mercantile Exchange	
	01-65—New York Mercantile Exchange.	
	01-66—New York Cotton Exchange and Associates.	
	01-69—Commodity Exchange, Inc.	
	01-73—Coffee, Sugar and Cocoa Exchange.	
	01-74—International Monetary Market	
	01-77—New York Futures Exchange	
	01-78—New Orleans Commodity Exchange.	

28. Section 15.05 is revised to read as follows:

§ 15.05 Designation of a futures commission merchant to be the agent of foreign brokers, customers of a foreign broker, and foreign traders.

(a) For purposes of this section, the term "futures contract" means any contract for the purchase or sale of any commodity for future delivery traded or executed on or subject to the rules of any contract market; the term "option contract" means any contract for the purchase or sale of a commodity option traded or executed on or subject to the rules of any contract market; the term "customer" means any person for whose benefit a foreign broker makes or causes to be made any futures contract or option contract; and the term "communication" means any summons, complaint, order, subpoena, special call, request for information, or notice, as well as any other written document or correspondence.

(b) Any futures commission merchant who makes or causes to be made any futures contract or option contract for the account of any foreign broker or foreign trader shall thereupon be deemed to be the agent of the foreign broker or the foreign trader for purposes of accepting delivery and service of any communication issued by or on behalf of the Commission to the foreign broker or the foreign trader with respect to any futures or option contracts which are or have been maintained in such accounts carried by the futures commission merchant. In the case of a futures commission merchant who makes or causes to be made any futures or option contract for the account of a foreign broker, the futures commission merchant shall also be the agent of the customers of the foreign broker (including any customer who is also a foreign broker and its customers) who have positions in the foreign broker's futures or option contract account carried by the futures commission merchant for purposes of accepting delivery and service of any communication issued by or on behalf of the Commission to the customer with respect to any futures or option contracts which are or have been maintained in such accounts carried by the futures commission merchant. Service or delivery of any communication issued by or on behalf of the Commission to a futures commission merchant pursuant to such agency shall constitute valid and effective service or delivery upon the foreign broker, a customer of the foreign broker or the foreign trader. A futures commission merchant who has been served with, or to whom there has been delivered, a communication issued by or on behalf of the Commission to a foreign broker, a customer of the foreign broker or the foreign trader shall transmit the communication promptly and in a manner which is reasonable under the circumstances, or in a manner specified by the Commission in the communication, to the foreign broker, a customer of the foreign broker or the foreign trader.

(c) It shall be unlawful for any futures commission merchant to open a futures or options contract account for, or to effect transactions in futures contracts or option contracts for an existing account of, a foreign broker or foreign trader unless the futures commission merchant informs the foreign broker or foreign trader prior thereto, in any reasonable manner which the futures commission merchant deems to be appropriate, of the requirements of this section.

(d) The requirements of paragraphs (b) and (c) of this section shall not apply to any account carried by a futures commission merchant if the foreign broker, customer of a foreign broker, or foreign trader for whose benefit such account is carried has duly executed and maintains in effect a written agency agreement in compliance with this paragraph with a person domiciled in the United States and has provided a copy of the agreement to the futures commission merchant prior to the opening of an account, or placing orders for transactions in futures contracts or option contracts of an existing account, with the futures commission merchant. This agreement must authorize the person domiciled in the United States to serve as the agent of the foreign broker and customers of the foreign broker or the foreign trader for purposes of accepting delivery and service of all communications issued by or on behalf of the Commission to the foreign broker, customers of the foreign broker, or foreign trader and must provide an address in the United States where the agent will accept delivery and service of communications from the Commission. This agreement must be filed with the Commission by the futures commission merchant prior to opening an account for the foreign broker or foreign trader or effecting transactions in futures or option contracts for an existing account of a foreign broker or foreign trader. Unless otherwise specified by the Commission, the agreements required to be filed with the Commission shall be filed with the Secretary of the Commission at 2033 K Street, N.W., Washington, D.C. 20581. A foreign broker, customer of a foreign broker, or foreign trader shall notify the Commission immediately if the written agency agreement is terminated, revoked or is otherwise no longer in effect. If a futures commission merchant carrying an account for a foreign broker or foreign trader knows or should know that the agreement has expired, has been terminated or is otherwise no longer in effect, the futures commission merchant shall notify the Secretary of the Commission immediately. If the written agency agreement expires, terminates or is not in effect, the futures commission merchant and the foreign broker, customers of the foreign broker or foreign trader are subject to the provisions of paragraphs (b) and (c) of this section.

PART 16—REPORTS BY CONTRACT MARKETS

29. Section 16.00 is amended by revising paragraph (a) to read as follows:

§ 16.00 Clearing member reports.

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

* * * * *

30. Section 16.01 is amended by revising the introductory text of paragraphs (a) and (b) and by revising paragraphs (c) and (d) to read as follows:

§ 16.01 Trading volume, open contracts and price.

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

* * * * *

(b) *Prices.* Each contract market shall make readily available to the news media and the general public no later than the business day following the day to which the information pertains, the following information separately for futures, by commodity and by future, and, for options, by underlying futures contract for options on futures contracts or by underlying physical for options on physicals, and by put, by call, by expiration date and by strike price:

* * * * *

(c) *Additional information.* Each contract market shall make readily available to the public, in printed form at the office of the contract market, the following information with respect to transactions in commodity futures and commodity options on that contract market: (1) The method used by the contract market in determining nominal prices and settlement prices; and (2) if discretion is used by the contract market in determining the opening and closing ranges or the settlement prices, an explanation that certain discretion may be employed by the contract market and a description of the manner in which that discretion may be employed.

(d) *Reports to the Commission.* Unless otherwise approved by the Commission or its designee, the information specified in paragraphs (a) and (b) of this section shall be submitted to the Commission on compatible data processing punched cards, magnetic tapes or magnetic discs using a format and coding structure approved in writing by the Commission or its designee. Unless otherwise instructed by the Commission or its designee, such information shall be submitted the business day following the day to which the information pertains at the Regional Office of the Commission having local jurisdiction with respect to such contract market.

31. Section 16.02 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 16.02 Large option trader reports.

(a) *Information required.* When an option becomes the option which will expire next, and, in any case, at least six weeks prior to an option's expiration date, each contract market shall submit to the Commission a weekly report for options on futures and options on physicals that are settled in cash and, unless otherwise determined by the Commission, a daily report for all other options on physicals, containing the following information for each option trader controlling a reportable option position in the option which will expire next or controlling a reportable option position in an option which will expire in six weeks or less:

(1)(i) For options on futures contracts and options on physicals that are settled in cash, with respect to each put and call and each long and short controlled by the option trader, the following information shown separately by futures commission merchant or member of the contract market and combined for all futures commission merchants and members:

(A) All reportable positions in the option which is next to expire, by strike price;

(B) All reportable positions in any other options which expire within six weeks, by strike price;

(C) All reportable positions in the next-deferred option expiration date, regardless of strike prices;

(D) All reportable positions in all other more distant option expiration dates, regardless of strike prices; and

(E) The total reportable position controlled by the option trader in all option expiration dates, regardless of strike prices.

(ii) Unless otherwise determined by the Commission, for all other options on physicals, with respect to each put and call and each long and short controlled by the option trader, the following information shown separately by futures commission merchant or member of the contract market and combined for all futures commission merchants and members:

(A) All reportable positions in the option which is next to expire, by strike price, and the number of contracts exercised;

(B) All reportable positions in any other options which expire within six weeks, by strike price, and the number of contracts exercised;

(C) All reportable positions in the next-deferred option expiration date, regardless of strike prices, and the number of contracts exercised;

(D) All reportable positions in all other more distant option expiration dates, regardless of strike prices, and the number of contracts exercised; and

(E) The total reportable position controlled by the option trader in all option expiration dates, regardless of strike prices, and the total number of contracts exercised.

(iii) Each contract market shall identify all option positions controlled by the same trader which are carried at the same futures commission merchant or held by a member of the contract market by use of the number which is assigned by the futures commission merchant or member in accordance with § 17.01(a) of this chapter.

* * * * *

(b) *Form and manner of reporting.* The information required by paragraph (a) of this section shall be submitted in hard copy form and on compatible data processing punched cards, magnetic tapes or magnetic discs, using a format and coding structure approved in writing by the Commission or its designee. For options on futures and for options on physicals that are settled in cash, such information shall be compiled weekly as of the close of business on Tuesday, or Monday if Tuesday is a holiday, or more frequently than weekly as the Commission may direct. Unless otherwise instructed by the Commission or its designee, the information shall be submitted by the business day following that to which the information pertains at the Regional Office of the Commission having local jurisdiction with respect to such contract market.

32. Section 16.04 is amended by revising paragraph (a) to read as follows:

§ 16.04 Month-end reports.

(a) *Information to be provided.* Each contract market shall submit to the Commission, for each month, a report for options on futures contracts and separately a report for options on physicals showing long and short open option positions held at month-end in all accounts, reported separately by underlying futures contract or physical, for commercial and noncommercial option traders, by put, by call, by expiration date, by strike price and by clearing member.

* * * * *

PART 18—REPORTS BY TRADERS

33. Section 18.00 is amended by revising the introductory paragraph, paragraphs (a), (b), (c) and(d) and by removing paragraphs (e), (f), (g) and (h) to read as follows:

§ 18.00 Information to be furnished by traders.

Every trader who owns, holds or controls, or has held, owned or controlled, a reportable futures or options position in a commodity shall within one business day after a special call upon such trader by the Commission or its designee file reports to the Commission concerning transactions and positions in such futures or options. Reports shall be filed for the period of time that the trader held or controlled a reportable position as instructed in the call. Each such report shall be prepared on the Commission's Large Trader Reporting Form (Form 103) on a separate sheet for each commodity or option, and shall show for the day covered by the report the following information, as specified in the call, separately for each future or option and for each contract market:

(a) Open contracts;

(b) Purchases and sales;

(c) Delivery notices issued and stopped; and

(d) Options exercised.

§ 18.01 [Amended]

34. Section 18.01 is amended by removing paragraph (d).

35. Section 18.04 is amended by revising the introductory paragraph and paragraphs (a)(2), (a)(5), (a)(9), (b)(3), (b)(4), (c)(3), (c)(4), (c)(5), (c)(6), and (d) to read as follows:

18.04 Statement of reporting trader.

Every trader who holds or controls a reportable futures position shall file with the Commission a "Statement of Reporting Trader" on Form 40. Each trader shall file an initial Form 40 at such time as the Commission directs, but not later than the tenth business day following the date the trader assumes the reportable position. Subsequent filings shall be made at the time specified in paragraph (e) of this section. In addition, every trader who holds or controls a reportable option position, as set forth in § 15.00(b)(2)(ii) of this chapter, shall within one business day after a special call upon such trader by the Commission or its designee file a "Statement of Reporting Trader" with respect to such option positions. All traders shall complete Part A of the Form 40 and, in addition, shall complete:

Part B—If the trader is an individual, a partnership or a joint tenant.

Part C—If the trader is a corporation or type of trader other than an individual, partnership, or joint tenant.

(a) * * *

(2) Principal business and occupation of the reporting trader and, in addition, whether transactions are made for, on behalf of, or in association with, a customer trading program of a futures commission merchant, a commodity pool, a producer cooperative, any business activities in which the trader is commercially engaged, or for personal use.

* * * * *

(5) The name and address of each person whose account is controlled by the reporting trader.

* * * * *

(9) The following information concerning accounts which the reporting trader guarantees or in which the trader has a financial interest of ten percent or more if such accounts are in a name other than that of the reporting trader:

* * * * *

(b) * * *

(3) If the trader is self-employed and engaged in the marketing of a cash commodity or in a business activity which is hedged by use of the futures market, or the trader uses the option market in connection with such business, the cash commodity marketed or risk exposure covered, types of associated marketing activities, the option contract used or the futures contract used for hedging.

(4) The name, address, and type of any organization in which the reporting trader participates in the management if such organization holds another futures or option trading account.

* * * * *

(c) * * *

(3) Names and locations of all subsidiary firms that trade in commodity futures or options and whether or not the subsidiary firms are organized under the law of any state (including the District of Columbia) or territory or possession of the United States.

(4) Name, address, and business telephone number of person(s) actually controlling the trading and, if different persons are responsible for different commodities or options, the commodities or options for which each controller has responsibility.

(5) Name, office address and business telephone number of person or persons to contact regarding trading.

(6) If the firm is engaged in the marketing of a cash commodity or in a business activity which is hedged by using the futures markets, or the firm uses the option market in conjunction with such business, the cash commodity marketed or risk exposure covered, types of associated marketing activities, and the option contracts used or the futures contracts used for hedging.

(d) *Updating reports.* If at the time a trader holds or controls a reportable futures position and (1) the trader has not filed a Form 40 during the previous twelve months or (2) a Form 40 previously filed by the trader is no longer accurate because, since the previous filing, there has been a change in the information required under paragraph (a)(1), (a)(2), (a)(3), (a)(5), (a)(6), (a)(8), (a)(9), (a)(10), (b) or (c) of this section, the trader shall file an updated Form 40 with the Commission not later than 10 calendar days after the expiration of such twelve month period or after such change occurs, as the case may be.

36. Section 18.05 is revised to read as follows:

§ 18.05 Maintenance of books and records.

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

PART 21—SPECIAL CALLS FOR INFORMATION FROM CONTRACT MARKETS, FUTURES COMMISSION MERCHANTS, MEMBERS OF CONTRACT MARKETS, AND FOREIGN BROKERS

37. Section 21.02 is revised to read as follows:

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

Upon special call by the Commission for information relating to futures and/or option positions held on the dates specified in the call, each futures commission merchant, member of a contract market, or foreign broker, and, in addition, for options information, each contract market, shall furnish to the Commission the following information concerning accounts of traders owning or controlling such futures and/or options positions as may be specified in the call:

(a) The name and address of the person for whom each account is carried;

(b) The principal business or occupation of the person for whom each account is carried, as specified in the call;

(c) The type of each such account;

(d) The name, address and principal business or occupation of any person who controls the trading of each account;

(e) The name and address of any person having a financial interest of ten percent or more in each account;

(f) The number of open futures and/or option positions carried in each account as specified in the call; and

(g) As applicable, the following identifying information:

(1) Whether a trader who holds commodity options is classified as a commercial or as a noncommercial for each commodity option;

(2) Whether the open commodity futures contracts are classified as speculative, spreading (straddling), or hedging; and

(3) Whether any of the accounts in question are omnibus accounts and, if so, whether the originator of the omnibus account is another futures commission merchant or foreign broker.

PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS

38. Section 32.1 is revised to read as follows:

§ 32.1 Scope of Part 32; definitions.

(a) *Scope.* The provisions of this Part, except for the provisions of §§ 32.8 and 32.9 which shall in any event apply to all commodity option transactions, shall apply to all commodity option transactions except for commodity option transactions conducted or executed on or subject to the rules of a contract market pursuant to Section 4c(c) of the Act and the regulations promulgated thereunder.

(b) *Definitions.* As used in this Part:

(1) "Commodity option transaction" and "commodity option" each means any transaction or agreement in interstate commerce which is or is held out to be of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty' involving any commodity regulated under the Act other than wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, onions, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products and frozen concentrated orange juice;

(2) "Interstate commerce" shall be construed and have the same meaning as set forth in Sections 2(a) and 2(b) of the Act;

(3) "Option customer" means any person who, directly or indirectly, purchases or otherwise acquires for value any interest in a commodity option, but shall not include a person required to register as a futures commission merchant in accordance with this Part;

(4) "Purchase price" means the total actual cost paid or to be paid, directly or indirectly, by an option customer for entering into and maintaining an interest in a commodity option transaction by whatever name called; and

(5) "Striking price" means the price at which an option customer may purchase or sell the commodity or the contract of sale of a commodity for future delivery which is the subject of a commodity option transaction.

39. Section 32.11 is amended by revising paragraph (b) to read as follows:

§ 32.11 Suspension of commodity option transactions.

* * * * *

(b) The provisions of paragraph (a) of this section shall not apply to any commodity option transaction conducted in accordance with the provisions of § 32.4(a) or any commodity option transaction conducted on or subject to the rules of a contract market in accordance with the provisions of Section 4c(c) of the Act and the regulations promulgated thereunder.

* * * * *

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

40. Section 33.2 is amended by revising paragraph (a) to read as follows:

§ 33.2 Applicability of Act and rules; scope of Part 33.

(a) Except as otherwise specified in this Part and unless the context otherwise requires:

(1) Each board of trade designated, or applying for designation, by the Commission as a contract market for the purpose of trading commodity options pursuant to this Part shall be deemed for such purpose to be a "board of trade," "exchange," and a "contract market" and, with respect to commodity option transactions conducted pursuant to such designation, shall comply with and be subject to all of the provisions of the Act relating to boards of trade, exchanges, or contract markets as though such provisions were set forth herein; and

(2) The provisions of Sections 2(a)(1), 2(a)(8)(B), 4, 4a, 4c(a), 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4m, 4n, 5, 5a, 5b, 6, 6a, 6b, 6c, 7, 8(a)–(e), 8a, 8b, 8c, and 16 of the Act shall apply to commodity option transactions that are subject to the requirements of this Part as though such provisions were set forth herein and included specific references to commodity option transactions. Nothing contained in this section shall be construed to confer designation as a contract market absent issuance of an order of the Commission so designating an applicant board of trade.

* * * * *

41. Section 33.3 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 33.3 Unlawful commodity option transactions.

* * * * *

(b) * * *

(1) Any person to solicit or accept orders from an option customer (other than in a clerical capacity) for any commodity option transaction, or to surpervise any person or persons so engaged, unless such person is:

* * * * *

(2) Any person registered or required to be registered as a futures commission

merchant under the Act to permit another person to become or remain associated with such person as a partner, officer, employee, agent or representative (or in any status or position involving similar functions) in any capacity involving the solicitation or acceptance of an order from an option customer (other than in a clerical capacity) for any commodity option transaction or the supervision of any person or persons so engaged, if such person knows or should know that such other person is or was not registered as required by this Part or that such registration has expired, been suspended (and the period of suspension has not expired) or been revoked.

42. Section 33.4 is amended by revising the introductory paragraph and paragraphs (a)(1)(ii) and (a)(3), by revising paragraph (a)(4) and redesignating paragraph (a)(4), as paragraph (a)(6), by adding a new paragraph (a)(4), by revising paragraph (a)(5)(iii) and by adding a new paragraph (a)(5)(iv), by revising paragraph (b)(1)(iii), by adding a new paragraph (b)(11), and by revising paragraphs (c), (d), (d)(1), (d)(3), and (g) to read as follows:

§ 33.4 Designation as a contract market for the trading of commodity options.

The Commission may designate any board of trade located in the United States as a contract market for the trading of options on contracts of sale for future delivery or options on physicals when the applicant complies with and carries out the requirements of the Act (as provided in § 33.2), these regulations, and the following conditions and requirements with respect to the commodity option for which the designation is sought:

(a) * * *

(1) * * *

(ii) With respect to options on futures contracts, may be exercised only by the establishment, by book entry, in the clearing organization of positions in the underlying futures contract.

* * * * *

(3) If designation for the trading of options on futures contracts is sought, is designated as a contract market for the underlying contract of sale for future delivery which is the subject of the option for which designation is sought, and submits, if so requested by the Commission, the information called for by § 1.50 of this chapter (relating to continued compliance with the conditions and requirements for designation as a contract market) for the specified futures contract underlying the option for which the designation is sought, and the applicant complies with the conditions and requirements for designation as a contract market for such contract for future delivery as set forth in Sections 5 and 5a of the Act and as set forth in these regulations.

(4) In the case of a contract market which is requesting designation for the trading of options on physicals for which it is designated as a contract market for contracts of sale for future delivery or for options on futures contracts, submits, if so requested by the Commission, the information called for by § 1.50 of this chapter (relating to continued compliance with the conditions and requirements for designition as a contract market) for that specified futures contract and/or options on that futures contract, and the applicant complies with the conditions and requirements for designation as a contract market for such contract for future delivery as set forth in Sections 5 and 5a of the Act and as set forth in these regulations.

(5) * * *

(iii) If designation for the trading of options on futures contracts is sought the volume of trading in all contract months for future delivery of the commodity for which the option designation is sought has averaged at least 1,000 contracts per week on such board of trade for the 12 months preceding the date of application for the designation, or, alternatively, that there is sufficient liquidity in the cash and futures markets in the commodity underlying the option for which designation is being sought to prevent disruption of those markets by the trading of options on a futures contract; and

(iv) If designation for the trading of options on physicals is sought and thereafter for the purpose of demonstrating continued compliance with the Act and these regulations:

(A) The cash market for the underlying physical exhibits sufficient liquidity such that the grantor and purchaser of the option have the opportunity to purchase or sell the underlying physical at its economic value in normal cash marketing channels;

(B) There exists an accurate and widely-disseminated price series for the underlying physical which is deliverable on the option contract;

(C) Trading of such options will not be disruptive of trading in the cash market for the underlying physical or of any futures contract; and

(D) The individual terms and conditions of the option contract conform to practices in the underlying cash market or are otherwise justified, including a demonstration that the terms and conditions of the option contract provide for a deliverable supply which is not conducive to price manipulation or distortion, consistent with a description of the cash market furnished by the board of trade.

(6) If designation for the trading of options on a futures contract is sought, is not designated as a contract market for any other option on a futures contract, and if designation for the trading of options on a physical is sought, is not designated as a contract market for any other option on a physical.

(b) * * *

(1) * * *

(iii) The point, in terms of the price of the underlying futures contract or underlying physical, at which a new strike price will be introduced in any option which is already trading;

* * * * *

(11) Establish appropriate criteria which are reasonably designed to secure performance, upon exercise, of the option contracts.

(c) Such board of trade establishes procedures and conducts sales practice audits of member futures commission merchants which engage in the offer or sale of option contracts regulated under this Part. These sales practice audits must be of sufficient scope to enforce the contract market's rules, including imvestigation for the improper handling of discretionary accounts, inadequate internal supervision, fraudulent or high-pressure sales communications, compliance with disclosure requirements, improper handling and disposition of option customer complaints, and, where applicable, the futures commission merchant's officer or sale of deep-out-of-the-money options.

(d) A board of trade must submit an analysis and justification of the individual terms and conditions of the option contract. In determining whether to approve option contract terms and conditions, the Commission may consider the analysis and justification submitted for such terms and conditions, including, without limitation:

(1) The expiration date of the option if that date is less than ten business days before the earlier of the last trading day or the first notice day of any futures contract on the same or a related commodity;

* * * * *

(3) The nature of the clearing mechanism to be utilized for the commodity option, and the differences, if any, among the clearing mechanisms for options on futures contracts, options on physicals, and futures contracts;

* * * * *

(g) Such board of trade provides a comprehensive list of occupation or business categories of commercial users of the commodity underlying the option contract for which the board of trade is seeking designation as a contract market.

43. Section 33.5 is amended by revising paragraph (c) to read as follows:

§ 33.5 Application for designation as a contract market for the trading of commodity options.

* * * * *

(c) The effective period for designation as a contract market for a particular commodity option under this Part shall be for a period not to exceed three years from the effective date of the designation, or such shorter period as the Commission may specify at the time the designation is granted, and in any event shall be of no further force or effect should the Commission, by rule or regulation, repeal the provisions of this Part under which such designation is granted. Except as may be specifically authorized by the Commission, no board of trade which has been designated as a contract market for the trading of commodity options may authorize or allow the trading of any commodity option which will expire after the termination of the effective period of such designation, and, with respect to an option on a futures contract, where the delivery month of the futures contract underlying such option is later than the termination of the effective period of such designation or where the month for the underlying futures contract has not been listed.

44. Section 33.6 is amended by revising paragraph (c) to read as follows:

§ 33.6 Suspension or revocation of designation as a contract market for the trading of commodity options.

* * * * *

(c) The option market is not used on more than an occasional basis for other than speculative purposes by producers, processors, merchants or commercial users engaged in handling or utilizing the commodity (including the products, by-products or source commodity thereof) underlying an option, in interstate commerce; or

* * * * *

45. Section 33.7 is amended by revising portions of paragraph (b) (Options Disclosure Statement) and by revising paragraphs (c) and (d) to read as follows:

§ 33.7 Disclosure.

* * * * *

(b) The disclosure statement must read as follows:

OPTIONS DISCLOSURE STATEMENT

BECAUSE OF THE VOLATILE NATURE OF THE COMMODITIES MARKETS, THE PURCHASE AND GRANTING OF COMMODITY OPTIONS INVOLVE A HIGH DEGREE OF RISK. COMMODITY OPTION TRANSACTIONS ARE NOT SUITABLE FOR MANY MEMBERS OF THE PUBLIC. SUCH TRANSACTIONS SHOULD BE ENTERED INTO ONLY BY PERSONS WHO HAVE READ AND UNDERSTOOD THIS DISCLOSURE STATEMENT AND WHO UNDERSTAND THE NATURE AND EXTENT OF THEIR RIGHTS AND OBLIGATIONS AND OF THE RISKS INVOLVED IN THE OPTION TRANSACTIONS COVERED BY THIS DISCLOSURE STATEMENT.

BOTH THE PURCHASER AND THE GRANTOR SHOULD KNOW WHETHER THE PARTICULAR OPTION IN WHICH THEY CONTEMPLATE TRADING IS AN OPTION WHICH, IF EXERCISED, RESULTS IN THE ESTABLISHMENT OF A FUTURES CONTRACT (AN "OPTION ON A FUTURES CONTRACT") OR RESULTS IN THE MAKING OR TAKING OF DELIVERY OF THE ACTUAL COMMODITY UNDERLYING THE OPTION (AN "OPTION ON A PHYSICAL COMMODITY"). BOTH THE PURCHASER AND THE GRANTOR OF AN OPTION ON A PHYSICAL COMMODITY SHOULD BE AWARE THAT, IN CERTAIN CASES, THE DELIVERY OF THE ACTUAL COMMODITY UNDERLYING THE OPTION MAY NOT BE REQUIRED AND THAT, IF THE OPTION IS EXERCISED, THE OBLIGATIONS OF THE PURCHASER AND GRANTOR WILL BE SETTLED IN CASH.

A PERSON SHOULD NOT PURCHASE ANY COMMODITY OPTION UNLESS HE IS ABLE TO SUSTAIN A TOTAL LOSS OF THE PREMIUM AND TRANSACTION COSTS OF PURCHASING THE OPTION. A PERSON SHOULD NOT GRANT ANY COMMODITY OPTION UNLESS HE IS ABLE TO MEET ADDITIONAL CALLS FOR MARGIN WHEN THE MARKET MOVES AGAINST HIS POSITION AND, IN SUCH CIRCUMSTANCES, TO SUSTAIN A VERY LARGE FINANCIAL LOSS.

A PERSON WHO PURCHASES AN OPTION SHOULD BE AWARE THAT IN ORDER TO REALIZE ANY VALUE FROM THE OPTION, IT WILL BE NECESSARY EITHER TO OFFSET THE OPTION POSITION OR TO EXERCISE THE OPTION. IF AN OPTION PURCHASER DOES NOT UNDERSTAND HOW TO OFFSET OR EXERCISE AN OPTION, THE PURCHASER SHOULD REQUEST AN EXPLANATION FROM THE FUTURES COMMISSION MERCHANT. CUSTOMERS SHOULD BE AWARE THAT IN A NUMBER OF CIRCUMSTANCES, SOME OF WHICH WILL BE DESCRIBED IN THIS DISCLOSURE STATEMENT, IT MAY BE DIFFICULT OR IMPOSSIBLE TO OFFSET AN EXISTING OPTION POSITION ON AN EXCHANGE.

THE COMMODITY FUTURES TRADING COMMISSION REQUIRES THAT ALL CUSTOMERS RECEIVE AND ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT BUT DOES NOT INTEND THIS STATEMENT AS A RECOMMENDATION OR ENDORSEMENT OF EXCHANGE-TRADED COMMODITY OPTIONS.

Contents of Disclosure Statement

(1) *SOME OF THE RISKS OF OPTION TRADING.*

THE GRANTOR OF AN OPTION SHOULD BE AWARE THAT, IN MOST CASES, A COMMODITY OPTION MAY BE EXERCISED AT ANY TIME FROM THE TIME IT IS GRANTED UNTIL IT EXPIRES. THE PURCHASER OF AN OPTION SHOULD BE AWARE THAT SOME OPTION CONTRACTS MAY PROVIDE ONLY A LIMITED PERIOD OF TIME FOR EXERCISE OF THE OPTION.

THE PURCHASER OF A PUT OR A CALL IS SUBJECT TO THE RISK OF LOSING THE ENTIRE PURCHASE PRICE OF THE OPTION—THAT IS THE PREMIUM PAID FOR THE OPTION PLUS ALL TRANSACTION COSTS.

Specific market movements of the underlying future or underlying physical commodity cannot be predicted accurately.

The grantor of a call option who does not have a long position in the underlying futures contract or underlying physical commodity is subject to risk or loss should the price of the underlying futures contract or underlying physical commodity increase by an amount greater than the premium received for granting the call option.

The grantor of a call option who has a long position in the underlying futures contract or underlying physical commodity is subject to the full risk of a decline in price of the underlying position. In exchange for the premium received for granting a call option, the option grantor gives up all of the potential gain resulting from an increase in the price of the underlying futures contract or underlying physical commodity above the option strike price if the option is exercised against the grantor.

The grantor of a put option who does not have a short position in the underlying futures contract or underlying physical commodity (*e.g.*, commitment to sell the physical) is subject to risk of loss should the price of the underlying futures contract or underlying physical commodity decrease by an amount in excess of the premium received for granting the put option.

The grantor of a put option on a futures contract who has a short position in the underlying futures contract is subject to the full risk of a rise in the price in the underlying position. In exchange for the premium received for granting a put option on a futures contract, the option grantor gives up all of the potential gain resulting from a decrease in the price of the underlying futures contract below the option strike price if the option is exercised against the grantor. The grantor of a put option on a physical commodity who has a short position (*e.g.*, commitment to sell the physical) is subject to the full risk of a rise in the price of the physical commodity which must be obtained to fulfill the commitment. In exchange for the premium, the grantor of a put option on a physical commodity gives up all of the potential gain which would have resulted from a decrease in the price of the commodity below the option strike price if the option is exercised against the grantor.

(2) *Description of Commodity Options.* Prior to entering into any transaction involving a commodity option, an individual should thoroughly understand the nature and type of option and the underlying futures contract or underlying physical commodity involved. The futures commission merchant is required to provide, and the individual contemplating an option transaction should obtain, a description of the following:

(i) The futures contract or the physical commodity which is the subject of the option;

(ii) The quantity of the underlying futures contract or underlying physical commodity which may be purchased or sold upon exercise of the option or, if applicable, whether exercise of the option will be settled in cash;

* * * * *

(v) A description of all costs in addition to the purchase price which may be incurred if the commodity option is exercised, including the amount of commissions (whether termed sales commissions or otherwise), storage, interest, and all similar fees and charges which may be incurred;

(vi) An explanation and understanding of an option grantor's initial margin requirement and obligation to provide additional margin in connection with such an option position, or a position in a futures contract, if applicable;

* * * * *

(viii) If applicable, a description of the effect upon the value of the option position that could result from limit moves in the underlying futures contract.

(3) *The Mechanics of Option Trading.* Before entering into any exchange-traded option transaction, an individual should obtain a description of how commodity options are traded.

Option customers should clearly understand that there is no guarantee that option positions may be offset by either a closing purchase or closing sale transaction on an exchange. In this circumstance, option grantors could be subject to the full risk of their positions until the option positions expire, and the purchaser of a profitable option might have to exercise the option to realize a profit.

For an option on a futures contract, an individual should clearly understand the relationship between exchange rules governing option transactions and exchange rules governing the underlying futures contract. For example, an individual should understand what action, if any, the exchange will take in the option market if trading in the underlying futures market is restricted or the futures prices have made a "limit move."

* * * * *

(5) *Profit Potential of An Option Position.* An option customer should carefully calculate the price which the underlying futures contract or underlying physical commodity would have to reach for the option position to become profitable. This price would include the amount by which the underlying futures contract or underlying physical commodity would have to rise above or fall below the strike price to cover the sum of the premium and all other costs incurred in entering into and exercising or closing (offsetting) the commodity option position.

(6) *Deep-out-of-the-Money Options.* A person contemplating purchasing a deep-out-of-the-money option (that is, an option with a strike price significantly above, in the case of a call, or significantly below, in the case of a put, the current price of the underlying futures contract or underlying physical commodity) should be aware that the chance of such an option becoming profitable is ordinarily remote.

On the other hand, a potential grantor of a deep-out-of-the-money option should be aware that such options normally provide small premiums while exposing the grantor to all of the potential losses described in section (1) of this disclosure statement.

(7) *Glossary of Terms.* (i) *Contract market*—Any board of trade (exchange) located in the United States which has been designated by the Commodity Futures Trading Commission to list a futures contract or commodity option for trading.

(ii) *Exchange-traded option; put option; call option*—The options discussed in this disclosure statement are limited to those which may be traded on a contract market. These options (subject to certain exceptions) give an option purchaser the right to buy in the case of a call option, or to sell in the case of a put option, a futures contract or the physical commodity underlying the option at the stated strike price prior to the expiration date of the option. Each exchange-traded option is distinguished by the underlying futures contract or underlying physical commodity, strike price, expiration date, and whether the option is a put or a call.

(iii) *Underlying futures contract*—The futures contract which may be purchased or sold upon the exercise of an option on a futures contract.

(iv) *Underlying physical commodity*—The commodity of a specific grade (quality) and quantity which may be purchased or sold upon the exercise of an option on a physical commodity.

(v) *Class of options*—A put or a call covering the same underlying futures contract or underlying physical commodity.

(vi) *Series of options*—Options of the same class having the same strike price and expiration date.

(vii) *Exercise price—See* strike price.

(viii) *Expiration date*—The last day when an option may be exercised.

(ix) *Premium*—The amount agreed upon between the purchaser and seller for the purchase or sale of a commodity option.

(x) *Strike price*—The price at which a person may purchase or sell the underlying futures contract or underlying physical commodity upon exercise of a commodity option. This term has the same meaning as the term "exercise price."

(xi) *Short option position—See* opening sale transaction.

(xii) *Long option position—See* opening purchase transaction.

(xiii) *Types of options transactions*—

(A) *Opening purchase transaction*—A transaction in which an individual purchases an option and thereby obtains a long option position.

(B) *Opening sale transaction*—A transaction in which an individual grants an option and thereby obtains a short option position.

(C) *Closing purchase transaction*—A transaction in which an individual with a short option position liquidates the position. This is accomplished by a closing purchase transaction for an option of the same series as the option previously granted. Such a transaction may be referred to as an offset transaction.

(D) *Closing sale transaction*—A transaction in which an individual with a long option position liquidates the position. This is accomplished by a closing sale transaction for an option of the same series as the option previously purchased. Such a transaction may be referred to as an offset transaction.

(xiv) *Purchase price*—The total actual cost paid or to be paid, directly or indirectly, by a person to acquire a commodity option. This price includes all commissions and other fees, in addition to the option premium.

(xv) *Grantor, writer, seller*—An individual who sells an option. Such a person is said to have a short position.

(xvi) *Purchaser*—An individual who buys an option. Such a person is said to have a long position.

(c) Prior to the entry of the first commodity option transaction for the account of an option customer, a futures commission merchant or the person soliciting or accepting the order therefor must provide an option customer with all of the information required under the disclosure statement: *Provided,* The limitations, if any, on the transfer of an option customer's account to a futures commission merchant other than the one through whom the commodity option transactions are to be executed must be provided in writing; *Provided, further,* That the futures commission merchant or the person soliciting or accepting the order therefor must provide current information to an option customer if the information provided previously has become inaccurate.

(d) Prior to the entry into a commodity option transaction on or subject to the rules of a contract market, each option customer or prospective option customer shall, to the extent the following amounts are known or can reasonably be approximated, be informed by the person soliciting or accepting the order therefor of the amount of the premium and any mark-ups thereon, if applicable, commissions, costs, fees and other charges to be incurred in connection with the commodity option transaction.

as well as the strike price and all costs to be incurred by the option customer if the commodity option is exercised.

* * * * *

PART 145—COMMISSION RECORDS AND INFORMATION

46. Section 145.5 is amended by revising paragraph (d)(1)(vi) to read as follows:

§ 145.5 Nonpublic matters.

* * * * *

(d) * * *

(1) * * *

(vi) Reports required to be filed pursuant to Parts 15–21 of this chapter; and

* * * * *

PART 147—OPEN COMMISSION MEETINGS

47. Section 147.3 is amended by revising paragraph (b)(4)(i)(F) to read as follows:

§ 147.3 General requirement of open meetings; grounds upon which meetings may be closed.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(F) Reports required to be filed pursuant to Parts 15–21 of this chapter; and

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PART 155—TRADING STANDARDS

48. Section 155.2 is amended by revising paragraphs (a), (b), and (i) to read as follows:

§ 155.2 Trading standards for floor brokers.

Each contract market shall adopt and submit to the Commission for approval pursuant to Section 5a(12) of the Act and § 1.41 of this chapter, a set of rules which shall, at a minimum, with respect to each member of the contract market acting as a floor broker:

(a) Prohibit such member from purchasing any commodity for future delivery, purchasing any call option, or selling any put option, for his own account or for any account in which he has an interest, while holding an order of another person for the (1) purchase of any future, (2) purchase of any call option, or (3) sale of any put option, in the same commodity which is executable at the market price or at the price at which such purchase or sale can be made for the member's own account or any account in which he has an interest.

(b) Prohibit such member from selling any commodity for future delivery, selling any call option, or purchasing any put option, for his own account or for any account in which he has an interest, while holding an order of another person for the (1) sale of any future, (2) sale of any call option, or (3) purchase of any put option, in the same commodity which is executable at the market price or at the price at which such sale or purchase can be made for the member's own account or any account in which he has an interest.

* * * * *

(i) Require that every execution of a transaction on the floor by such member be confirmed promptly with the opposite floor broker or floor trader; such confirmation shall identify price or premium, quantity, future or commodity option and respective clearing members. In the event a contract market cannot require prompt identification of respective clearing members without seriously disrupting the functions of its marketplace, the contract market may petition the Commission for exemption from this requirement. Such petition shall include:

* * * * *

49. Section 155.3 is amended by revising paragraph (a)(1) to read as follows:

§ 155.3 Trading standards for futures commission merchants.

(a) * * *

(1) Insure, to the extent possible, that each order received from a customer or from an option customer which is executable at or near the market price is transmitted to the floor of the appropriate contract market before any order in any future or in any commodity option in the same commodity for any proprietary account, any other account in whch an affiliated person has an interest, or any account for which an affiliated person may originate orders without the prior specific consent of the account owner, if the affiliated person has gained knowledge of the customer's or option customer's order prior to the transmission to the floor of the appropriate contract market of the order for a proprietary account, an account in which the affiliated person has an interest, or an account in which the affiliated person may originate orders without the prior specific consent of the account owner; and

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PART 170—REGISTERED FUTURES ASSOCIATIONS

50. The authority citation for Part 170 is revised to read as follows:

Authority: 7 U.S.C. 6c, 12a, and 21.

51. Section 170.5 is revised to read as follows:

§ 170.5 Prevention of fraudulent and manipulative practices (Section 17(b)(7) of the Act).

A futures association must establish and maintain a program for the protection of customers and option customers, including the adoption of rules to protect customers and option customers and customer funds and to promote fair dealing with the public. These rules shall set forth the ethical standards for members of the association in their business dealings with the public. An applicant association must also demonstrate its capability to foster a professional atmosphere among its members, including an acceptance of an adherence to the ethical standards, and to monitor and enforce compliance with the customer and option customer protection program and rules.

52. Section 170.8 is revised to read as follows:

§ 170.8 Settlement of customer disputes (Section 17(b)(10) of the Act).

A futures association must be able to demonstrate its capability to promulgate rules and to conduct proceedings which provide a fair and equitable procedure, through arbitration or otherwise, for the voluntary settlement of a customer's or option customer's claim or grievance of less than $15,000 brought against any member of the association or any employee of a member of the association. Such rules shall conform to and be consistent with Section 17(b)(10) of the Act and be consistent with Part 180 of the Commission's regulations governing contract market arbitration and dispute settlement procedures.

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

53. Section 180.1 is amended by revising paragraph (a) to read as follows:

§ 180.1 Definitions.

(a) The term "claim or grievance" as used in this Part shall mean any dispute which arises out of any transaction on or subject to the rules of a contract market, executed by or effected through a member of that contract market or employee thereof which dispute does not require for adjudication the presence of essential witnesses or third parties over whom the contract market does not have jurisdiction and who are not otherwise available. The term claim or grievance does not include disputes arising from cash market transactions which are not a part of or directly connected with any transaction for the purchase or sale of any commodity for future delivery or commodity option.

* * * * *

Issued in Washington, D.C. on December 13, 1982, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 82-34538 Filed 12-21-82; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 35

[T.D. 7858]

Withholding From Pensions, Annuities, and Certain Other Deferred Income; Temporary Regulations

Correction

In FR Doc. 82-32771 beginning on page 54065 in the issue for Wednesday, December 1, 1982, make the following correction:

On page 54066, middle column, in paragraph **e. Reporting and Recordkeeping** to § 35.3405-1, in the first line *"l-10."* should have read *"e-10."*.

BILLING CODE: 1505-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Non-Multiemployer Plans

AGENCY: Pension Benefits Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits in Non-Multiemployer Plans, Part 2619, by adding a new table, Table I-83, to Appendix D and correcting typographical errors in Subpart D. Table I-83 is to be used for plans covered under Title IV of the Employee Retirement Income Security Act of 1974, *as amended*, that terminate in 1983. The table is needed to determine an expected retirement age for certain plan participants in terminating pension plans that provide for an early retirement benefit. The expected retirement age is needed to calculate the value of the early retirement benefit and, thus, the total value of benefits under the plan.

EFFECTIVE DATE: January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of General Counsel, Code 210, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, 202-254-4895 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On January 28, 1981, the Pension Benefit Guaranty Corporation ("PBGC") published a final and interim rule on Valuation of Plan Benefits in Non-Multiemployer Plans, 29 CFR Part 2610 (46 FR 9504). Under Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.*, as amended, covered pension plans that terminate must determine the total value of benefits under the plan in order to determine if plan assets are sufficient to provide for those benefits. If plan assets are not sufficient to provide for all benefits guaranteed by PBGC, the employer is liable for the insufficiency up to a limit of 30% of the employer's "net worth" within the meaning of 29 U.S.C. 1362. The interim portion of the benefit valuation regulation, Subpart D and Appendices D and E, provided methods for determining an expected retirement age to be used with the rules in Subparts B and C of Part 2610 to determine the value of an early retirement benefit. Part 2610 was redesignated Part 2619 in a notice published June 24, 1981 (46 FR 32574). Subpart D and Appendices D and E of Part 2619, as amended December 31, 1981 (46 FR 63268), were promulgated as final rules on April 13, 1982 (47 FR 15780).

Appendix D contains two sets of tables to be used to determine an expected date of retirement for each participant entitled to early retirement. The first set of tables, Selection of Retirement Rate Category (I-79, I-80, I-81, and I-82), is used to determine whether a participant has a low, medium, or high probability of retiring early. The second set of tables, Expected Retirement Ages for Individuals in the Low/Medium/High Categories (II-A, II-B, and II-C), is used to determine the expected retirement age.

The first set of tables determines the probability of early retirement based on the year a participant would reach normal retirement age and the participant's monthly benefit at normal retirement age. The second set of tables establishes, by probability category, the expected retirement age based on the earliest age a participant could retire and on the normal retirement age under the plan. This age is used to calculate the value of the early retirement benefit and, thus, the total value of benefits under the plan and the amount of employer liability, if any, owed to PBGC.

The first set of tables in Appendix D as originally published (46 FR 9504)—the Selection of Retirement Rate Category—consists of three tables. The tables establish a retirement rate category for each of the calendar years 1979 through 1981, and each table applies only to plans terminating in that particular year. A new table, I-82, was added on December 31, 1981 (46 FR 63268) in order to update the correlation between the amount of a participant's benefit and the probability that he or she will elect early retirement. Normally, a table remains in effect only for a calendar year. This rule amends Appendix D of Part 2619 to add Table I-83 for use in valuing benefits in plans that terminate during calendar year 1983.

This rule also amends §§ 2619.63(c) and 2619.64(c) to correct two typographical errors. The cross reference to Appendix C should be to Appendix D in each instance.

The PBGC has determined that notice of and public comment on the addition of Table I-83 to Appendix D, Part 2619, are impracticable and contrary to the public interest. This determination is based on the need to issue the table promptly so the appendix will reflect, as accurately as possible, the relationship between a participant's benefit and his or her probability of retiring early. The PBGC has found that the public interest is best served by issuing this table without an opportunity for notice and comment so that plans can calculate the value of plan benefits before submitting a notice of intent to terminate. Also, plans will be able to predict employer liability more accurately prior to plan termination and can, therefore, lessen or avoid interest charges under 29 CFR 2622.7 for late payment of employer liability. Moreover, because of the need to provide immediate guidance for the valuation of benefits under plans that will terminate on or after January 1, 1983, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the table set forth in this amendment to the final regulation effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291 of