Any Department of Commerce District Office.

FOR FURTHER INFORMATION CONTACT:
Richard J. Isadore, (202) 377–4188.

SUPPLEMENTARY INFORMATION:

Public Comments

The period for submission of comments will close August 30, 1982. All comments received before the close of the comment period will be considered by the Department in the review of the Regulations. While comments received after the end of the comment period will be considered if possible, their consideration cannot be assured. Public comments that are accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason will not be accepted. Such comments and materials will be returned to the submitter and will not be considered in the agency review of the Regulations.

All public comments on the review of the Regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning this notice of agency review of the Regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4001–B, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

Purpose of the Review

The Department is reviewing the Export Administration Regulations (15 CFR Parts 368–399).

This review will exclude the following Parts:

Part 369—Restrictive Trade Practices or Boycotts—was revised completely, effective in January, 1978.

Part 377—Short Supply Controls and Monitoring—will be considered separately.

Parts 387, 388 and 389—Forcement; Administrative Proceedings; and Appeals—have recently been revised completely.

The objectives of the review are:

- Make it easier for users to understand and comply with the Regulations.
- Eliminate unnecessary administrative requirements and obsolete provisions.
- Achieve program objectives in the least burdensome manner.

The ultimate end-product of this review will be a set of regulations that are presented in more readable format, and that reduce documentation requirements, wherever possible. This review will not include the substance of the Regulations, that is, the commodities and technical data subject to controls and the countries to which such controls apply.

Organization

The Department intends to review the overall organization of the Regulations, as well as the organization of individual parts of the Regulations. Comments concerning the organization of the Export Administration Regulations might address:

One Part or the entire structure.
Chronological vs. functional approach.
Defense of present structure.
Strong and weak points of the present structure.
Specific organizational changes.

Documentation Requirements

Throughout the Export Administration Regulations, there are requirements for submission of documentation, reports and records, and for maintenance of records. The Department intends to review these requirements for necessity, complexity and frequency. Comments concerning these requirements might address:

Specific reports or documents or a group of reports relating to a class of exports.
Complexity of forms.
Duplication of information required.
Overly burdensome requirements.
Easier ways to submit the required information.

Economic Impact

The Department intends to address the economic impact of these regulations in broad terms only. However, commenters who have specific statistics concerning this impact are encouraged to submit them. This type of data would be particularly useful in supporting recommendations for changes in the regulations.

Dated: April 14, 1982.

Vincent F. DeCain,
Acting Director, Office of Export Administration.

[FR Doc. 82–11811 Filed 4–29–82; 8:45 am]
BILLING CODE 3510–25–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Ch. I

Regulatory Flexibility Agenda

AGENCY: Commodity Futures Trading Commission.

ACTION: Publication of Regulatory Flexibility Agenda.

SUMMARY: The Commodity Futures Trading Commission, in accordance with the requirements of the Regulatory Flexibility Act, is publishing a semiannual agenda of significant rules which the Commission expects to propose or promulgate over the next year.

ADDRESS: Comments should be sent to: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581 Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT:
Nancy E. Yanofsky, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581 (202–254–5716).

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601, et seq., ("RFA"), sets forth a number of requirements for agency rulemaking. Among other things, the RFA requires that:

(a) During the months of October and April of each year, each agency shall publish in the **Federal Register** a regulatory flexibility agenda which shall contain—

(1) A brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

(2) A summary of the nature of such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking, and

(3) The name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1) 5 U.S.C. 602(a).

Accordingly, the Commission has prepared an agenda of significant rules which it presently expects may be considered during the course of the next year.[1] The agenda lists all significant rules which may be considered by the Commission within the next year, irrespective of their potential impact on small entities.[2]

These matters include the following:

1. Regulation of Foreign Brokers and Traders

The Commission has proposed rules which would require domestic futures commission merchants who carry accounts for foreign market participants to obtain certain information on behalf of the Commission. If the information were not provided to the Commission on request, the FCM would be required to liquidate its customer's account. Public comments have been received on this proposal and on the question to whether information which FCMs must make available should be maintained by the FCMs on a routine basis or obtained by the FCMs only when specifically requested by the Commission. The Commission expects to decide whether to adopt these rules in final form in the spring/summer of 1982.

Legislative Authority: Sections 4g, 4i, 5, 5a and 8a of the Commodity Exchange Act, 7 U.S.C. 6g, 6i, 7, 7a and 12a (1976 and Supp. IV 1980).

Agency Contact: Maureen Donley, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581 (202–254–5984).

Outstanding Federal Register Notice: Futures Commission Merchants—Duties Concerning Accounts Carried for Foreign Brokers and Traders, Proposed Rule, 45 FR 31731 (May 14, 1980).

2. Bankruptcy and Related Regulations

The Bankruptcy Code permits the Commission to adopt regulations implementing Subchapter IV of Chapter 7 of the Bankruptcy Code which pertains specifically to bankruptcies of commodity firms. In this connection, the Commission has proposed regulations which will address each of the matters with respect to which it is authorized to promulgate regulations, including the scope of "customer property," the requirements for characterizing property as specifically identifiable, the method of calculating net equity, the criteria for the transfer of customer property free of the avoidance powers of the bankruptcy trustee, and guidelines for the operation of a debtor's estate pending its liquidation. The proposed bankruptcy rules will affect certain businesses for which the Commission has not yet developed financial regulations, such as leverage transaction merchants and foreign futures commission merchants, since the commodity broker subchapter of the Bankruptcy Code pertains to such businesses, as well as other commodity firms.

The proposed rules were published for comment on November 24, 1981. The comment period expires on May 15, 1982. As technical amendments to Subchapter IV are now pending in Congress, the Commission expects to review the comments and take appropriate action in late 1982 or early 1983.

Legislative Authority: Sections 8a and 19 of the Commodity Exchange Act, 7 U.S.C. 12a and 24 (1967 and Supp. IV 1980).

Agency Contact: Andrea M. Corcoran, Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581 (202–254–8955).

Outstanding Federal Register Notice: Bankruptcy Proposed Rules, 46 FR 57535 (Nov. 24, 1981); Extension of Comment Period, 47 FR 8789 (Mar. 2, 1982) and 47 FR 16187 (Apr. 15, 1982).

3. Proficiency Examinations for Applicants for Registration as Associated Person ("AP")

The Commission has proposed to adopt a rule which, in essence, would require new applicants for registration as an AP to pass a written proficiency examination as a condition of registration. The proposed rule would require each AP applicant to have passed at the minimum competency level a specified written proficiency examination within two years preceding the date of his filing an application to be registered as such. Under the proposal, however, a currently registered AP would not be subject to the examination requirement unless his registration lapsed for a period of two years or more prior to his reapplication.

The examination program would be developed and administered by a person or persons selected by the Commission, subject to Commission supervision. If adopted, however, the program would be one of the functions that a futures association registered under Section 17 of the Commodity Exchange Act could assume, under Commission oversight.[3]

The Commission intends that an independent testing organization would be utilized to develop and administer the examination. Such organization would establish and collect a reasonable examination fee, approved by the Commission or, if the Commission so directs, by a registered futures association.

The comment period on the proposed rules expired on June 8, 1981. Action has been deferred temporarily pending the expected assumption by the National Futures Association (see note 3, *supra*) of regulatory responsibilities in this area.

Legislative Authority: Sections 4k, 4p and 8a of the Commodity Exchange Act, 7 U.S.C. 6k, 6p and 12a (1976 and Supp. IV 1980).

Agency Contact: David S. Mitchell, Esq., or Robert P. Shiner, Assistant Director for Registration, Division of Trading and Markets, 2033 K Street, N.W., Washington, D.C. 20581 (202–254–8955).

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[1] The Commission's agenda represents its best estimate at this time of significant rules which will be considered sometime over the next twelve months. In this regard, section 602(d) of the RFA, 5 U.S.C. 602(d), provides:

Nothing in (section 602) precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda or requires an agency to consider or act on any matter listed in such agenda.

In addition to publishing the regulatory flexibility agenda required by Section 602 of the RFA, the Commission also makes available to the public, on a monthly basis, a calendar listing rules that will be considered by the Commission during that month.

[2] The Commission simultaneously is publishing its definitions of small entity which will be used by the Commission in connection with future rulemaking proceedings. Pursuant to those definitions, the Commission is not required to list many of the agenda items contained in this regulatory flexibility agenda. See 5 U.S.C. 602(a)(1). For example, since the Commission has defined small entity not to include contract markets, proposed rulemaking concerning economic and public interest tests for contract market designation (Agenda Item 7), dormant and low volume contracts (Agenda Item 8) and large trader reporting to exchanges (Agenda Item 13) need not be included in the agenda. Moreover, the Commission has previously certified, pursuant to Section 605 of the RFA, 5 U.S.C. 605, that certain items contained in this agenda will not have a significant economic impact on a substantial number of entities. See, *e.g.*, 46 FR 20684 (Apr. 7, 1981) (Agenda Item 3), 46 FR 23477 (Apr. 27, 1981) (Agenda Item 5), and 46 FR 60837 (Dec. 14, 1981) (Agenda Item 12). Accordingly, listing of an item in this regulatory flexibility agenda should not, in any event, be taken as a determination that a rule, when proposed or promulgated, will in fact require a regulatory flexibility analysis. However, the Commission hopes that the publication of an agenda which includes significant rules, regardless of their potential impact on small entities, may serve the public generally by providing early and meaningful opportunity to participate in and comment on the formulation of new or revised regulations.

[3] On September 22, 1981, the Commission registered the National Futures Association under section 17 of the Act. The rules of the National Futures Association, however, presently do not include provisions for the assumption of the Commission's associated person registration function.

Outstanding Federal Register Notices: Proficiency Examinations for Associated Persons; Delegation of Authority; Proposed Rules, 46 FR 20679 (Apr. 7, 1981).

4. Registration of Non-Clerical Employees and Agents of Commodity Pool Operations ("CPOs") and Commodity Trading Advisors ("CTAs")

The Commission has issued a **Federal Register** release reproposing to adopt rules that would implement and facilitate the registration of non-clerical employees and agents of CPOs and CTAs. The comment period expired March 16, 1982. The Commission has also made a similar proposal in the form of an amendment to the Commodity Exchange Act in connection with reauthorization. The Commission has deferred action pending Congressional consideration of its statutory proposal.

Legislative Authority: Sections 2(a)(1), 4b, 4c, 4*l*, 4m, 4n, 4*o*, 8a and 19 of the Commodity Exchange Act, 7 U.S.C. 2, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12a and 23 (1976 and Supp. IV 1980).

Agency Contact: Kenneth M. Rosenzweig, Assistant Chief Counsel, Division of Trading and Markets, 2033 K Street, NW., Washington, D.C. 20581 (202–254–8955).

Outstanding Federal Register Notices: Revisions of Commodity Pool Operator and Commodity Trading Advisory Regulations; Proposed Rules, 45 FR 51600 (Aug. 4, 1980); Revisions of Commodity Pool Operators and Commodity Trading Advisory Regulations, Delegation of Authority, 46 FR 26004 (May 8, 1981); Registration of Employees of Commodity Trading Advisors and Commodity Pool Operators, 47 FR 2325 (Jan. 15, 1982).

5. Dealer Options

Congress has directed the Commission to issue regulations permitting grantors and futures commission merchants to grant, offer and sell so-called "dealer options" on certain physical commodities subject to certain conditions specified by statute and such other uniform and reasonable requirements as the Commission may prescribe. At present, the only persons who may lawfully grant dealer options are United States domiciles who, on May 1, 1978, were in the business of granting options on a physical commodity and in the business of buying, selling, producing or otherwise using that commodity.

The Commission has reproposed rules, principally concerning registration of dealer option grantors, requirements for the segregation of customer funds, disclosure to customers and prospective customers, and minimum financial requirements. The Commission expects to decide whether to adopt these rules during the latter part of 1982.

Legislative Authority: Sections 4c(b), 4c(d) and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 6c(b), 6c(d) and 12a(5) (1976 and Supp. IV 1980).

Agency Contact: Lawrence B. Patent, Special Counsel, Division of Trading and Markets, 2033 K Street, NW, Washington, D.C. 20581 (202–254–7360).

Outstanding Federal Register Notices: Proposed Reissuance and Amendments to Commodity Option Regulations, 43 FR 59396 (Dec. 20, 1978); Proposed Reissuance of and Amendments to Regulations Permitting the Grant, Offer and Sale of Options on Physical Commodities, 46 FR 23469 (Apr. 27, 1981).

6. Regulation of Leverage Transactions

The Commission has directed its staff to develop a program for regulating gold and silver leverage transactions. The Commission considered certain staff proposals on various policy issues relating to leverage transactions in April 1981. These policy issues included the registration of leverage transaction merchants, minimum financial requirements, and requirements for the segregation of funds, issuance of disclosure statements, and recordkeeping and reporting.

A moratorium on the entry of new firms into the gold and silver leverage business which were not in that business on June 1, 1978, has been in effect since January 4, 1979. The Commission has previously announced its intention to regulate gold and silver leverage transactions as contracts for future delivery under the Commodity Exchange Act, but has delayed implementation of this approach until October 1982.

The Commission, in connection with reauthorization, has submitted a proposal to Congress regarding the appropriate regulatory scheme for leverage transactions. The Commission's regulatory efforts with regard to leverage transactions have been deferred pending Congressional consideration of the Commission's proposal.

Legislative Authority: Sections 8a and 19 of the Commodity Exchange Act, 7 U.S.C. 12a and 23 (1976 and Supp. IV 1980).

Agency Contact: David R. Merrill, Office of the General Counsel, 2033 K Street, NW., Washington, D.C. 20581 (202–254–7119).

Outstanding Federal Register Notices: Regulation of Leverage Transactions as Contracts for Future Delivery, 44 FR 44177 (July 27, 1979); Regulation of Leverage Transactions as Contracts for Future Delivery, Postponement of Effective Date, 44 FR 69304 (Dec. 3, 1979).

7. Criteria for Determining Whether a Board of Trade Meets the Economic Purpose and Public Interest Tests for Contract Market Designation

The Commodity Exchange Act requires a board of trade seeking to become a contract market for a particular commodity to show that futures trading in the commodity would not be contrary to the public interest. Guideline No. 1 sets forth the general criteria to be met by a contract market in making such a showing. They include an economic purpose test, a demonstration of the commercial viability of the contract and a showing that transactions for future delivery in the commodity will not be contrary to the public interest. The Commission has proposed a rule which would clarify the requirements with which boards of trade must comply for initial and continuing designation as contract markets. Proposed rules in this regard were published for comment in November 1980, and the Commission expects to decide whether to adopt these rules in final form in the spring/summer of 1982.

Legislative Authority: Sections 2(a), 5, 5a, 6 and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 7, 7a, 8 and 12a (1976 and Supp. IV 1980).

Agency Contact: Paul M. Architzel, Acting Chief Counsel, Division of Economics and Education, 2033 K Street, NW., Washington, D.C. 20581 (202–254–6990).

Outstanding Federal Register Notices: Economic and Public Interest Requirements for Contract Market Designation, 45 FR 73504 (Nov. 5, 1980); Extension of Comment Period, 46 FR 9958 (Jan. 30, 1981).

8. Dormant and Low Volume Contracts

The Commission has proposed two rules concerning dormant and low volume contracts. Rule 5.2 would provide that additional delivery months may be listed for dormant contracts only pursuant to passage by a contract market of an implementing bylaw, rule, regulation or resolution and approval by the Commission under Section 5a(12) of the Act and Rule 1.41(b). Rule 5.3 would establish contract reporting requirements for low volume contracts. This would include data concerning the contract's daily trading volume and number of open contracts during the low volume trading period, summary data concerning the nature of trading by floor brokers or traders during that period,

indications that the contract is being used by commercial participants and surveillance procedures instituted by the contract market to monitor trade practices in the low volume contract. The Commission expects to determine whether to adopt the proposal in the spring of 1982.

Legislative Authority: Sections 5, 5a, 6 and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 7, 7a, 8 and 12a(5) (1976 and Supp. IV 1980).

Agency Contact: Paul M. Architzel, Acting Chief Counsel, Division of Economic and Education, 2033 K Street, NW., Washington, D.C. 20581 (202–254–6990).

Outstanding Federal Register Notices: Dormant and Low Volume Contracts; Proposed Rule, 45 FR 73499 (November 5, 1980); Extension of Comment Period, 46 FR 9958 (January 30, 1981).

9. Regulations to Govern Trading in Options on Physical Commodities

The Commission recently had adopted regulations to govern a pilot program for trading of commodity options on domestic commodity exchanges. Those regulations permit the trading of options on futures contracts under specified conditions. On November 3, 1981, the Commission issued a **Federal Register** release requesting comment as to the manner in which to amend or supplement the regulations establishing the pilot program which will permit exchange trading on options on physical commodities. The comment period expired December 3, 1981. The Commission will, in reviewing comments received, decide whether revisions to these options regulations are needed.

Legislative Authority: Sections 4c(c) and 8a of the Commodity Exchange Act, 7 U.S.C. 6c(c) and 12a (1976 and Supp. IV 1980).

Agency Contacts: Lawrence B. Patent, Special Counsel, or Kenneth M. Rosenzweig, Assistant Chief Counsel, Division of Trading and Markets, 2033 K Street, NW., Washington, D.C. 20581 (202–254–8955); Eugene Moriarty, Division of Economics and Education, 2033 K Street, NW., Washington, D.C. 20581 (202–254–3310).

Outstanding Federal Register Notices: Domestic Exchange-Traded Commodity Options, Notice of Proposed Rulemaking, 46 FR 54570 (Nov. 3, 1981).

10. Gross Margining of Omnibus Accounts

The Commission discussed the issue of gross margining of omnibus accounts at its open policy meeting on September 17, 1981. The Commission expressed the view that a rule requiring gross margining of omnibus accounts may serve as an important additional protection for customer funds, especially those funds which are entrusted to futures commission merchants which are not members of any contract market. On December 29, 1981, the Commission issued a **Federal Register** release announcing a proposed rule requiring gross margining of omnibus accounts. The Commission expects to determine in mid-1982 whether to adopt this proposal.

Legislative Authority: Sections 4d, 4f and 8a of the Commodity Exchange Act, 7 U.S.C. 6d, 6f and 12a (1976 and Supp. IV 1980).

Agency Contact: Daniel A. Driscoll, Chief Accountant, Division of Trading and Markets, 2033 K Street, NW., Washington, D.C. 20581 (202–254–8955).

Outstanding Federal Register Notices: Gross Margining of Omnibus Accounts, 46 FR 62864 (Dec. 29, 1981).

11. Definition of "rule" of Contract Markets

The Commission has proposed to amend the definition of the term "rule" of a contract market in Commission regulation 1.41(a)(1), 17 CFR 1.41(a)(1), to state explicitly that the definition includes actions by a contract market, its governing borad, or any of its committees or officials which are adopted or taken pursuant to enabling authority set forth in any existing rule of the contract market. The Commission expects to review its procedures for reviewing rule submissions under Section 5a(12) of the Act in late 1982 and, within the context of that review, determine whether to adopt the proposed rule amendment.

Legislative Authority: Sections 5, 5a and 8a of the Commodity Exchange Act, 7 U.S.C. 7, 7a and 12a (1976 and Suppp. IV 1980).

Agency Contact: Linda Kurjan, Assistant Director, or Kenneth M. Rosenzweig, Assistant Chief Counsel, Division of Trading and Markets, 2033 K Street, NW., Washington, D.C. 20581 (202–254–8955).

Outstanding Federal Register Notices: Contract Market Rules, 45 FR 84082 (Dec. 22, 1980).

12. Arbitration and Reparations Proceedings

The Commission has proposed amendments to its rules governing arbitration and reparations proceedings which would (1) authorize the use of binding pre-dispute arbitration agreements, thereby effectively eliminating the right of a customer who voluntarily enters into such an agreement to seek reparations with respect to a dispute arising under the agreement; (2) provide the customer with a choice of arbitration forums; and (3) require contract markets to provide that their members will bear the costs of the proceedings. The proposed rules are intended to promote the use of arbitration as a dispute-resolution alternative to reparations proceedings. The Commission expects to decide whether to adopt this proposal in the fall of 1982.

Legislative Authority: Sections 2a(11), 5a(11), 8a(5) and 14 of the Commodity Exchange Act, 7 U.S.C. 4a(j), 7a(11), 12a(5) and 18 (1976 and Supp. IV 1980).

Agency Contact: Wendy E. Robinson, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581 (202) 254–8955.

Outstanding Federal Register Notices: Regulations Pertaining to Reparations and Arbitration, Proposed Rules, 46 FR 60834 (Dec. 14, 1981).

13. Large Trader Reporting to Exchanges

The Commission has proposed a rule which would require exchanges to collect, process and forward to the Commission, in machine readable form, information which the Commission currently collects from futures commission merchants and foreign brokers on series '01 reports and form 102. The rule is intended to enhance effective market surveillance programs by the exchanges and to alleviate, to some extent, the duplicative reporting burden currently imposed on some exchange member firms. The comment period expired November 25, 1981. The Commission expects to determine whether to adopt the proposal in mid-1983.

Legislative Authority: Sections 4g, 4i, 5(d) and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 6g, 6i, 7(d) and 12a(5) (1976 and Supp. iV 1980).

Agency Contact: Lamont L. Reese, Division of Economics and Education, Commodity Futures Trading Commission, 2033 K Stret, NW., Washington, D.C. 20581 (202) 254–3310.

Outstanding Federal Register Notices: Large Trader Reporting to Exchanges and Reporting Open Positions, 45 FR 57141 (Aug. 27, 1980).

14. Minimum Financial and Related Reporting Requirements for Futures Commission Merchants

The Commission has proposed amendments to certain of its minimum financial and related reporting requirements for futures commission merchants ("FCMs"), as well as the basic financial reporting form for FCMs, Form 1–FR. One proposed amendment

would alter the minimum dollar amount of adjusted net capital which must be maintained by FCMs. The Commission has also proposed a further amendment to the minimum financial regulations regarding the treatment of undermargined accounts. In addition, the Commission has proposed one specific capital charge relating to concentration of positions, and has invited further comment to assist it in the development of further appropriate minimum financial regulations concerning concentration of positions. The Commission expects to determine whether to adopt the proposals during the latter part of 1982.

Legislative Authority: Sections 4d, 4f and 8a of the Commodity Exchange Act, 7 U.S.C. 6d, 6f and 12a (1976 and Supp. IV 1980).

Agency Contact: Daniel A. Driscoll, Deputy Director, Division of Trading and Markets, 2033 K Street, NW., Washington, D.C. 20581 (202–254–8955).

Outstanding Federal Register Notices: Minimum Financial and Related Reporting Requirements: Proposed Rule Amendments, 45 FR 42633 (June 25, 1980); 45 FR 79498 (Dec. 1, 1980); Extension of Comment Period, 46 FR 16691 (Mar. 13, 1981).

Issued in Washington, D.C., on April 26, 1982, by the Commission.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 11664 Filed 4–29–82; 8:45 am]

BILLING CODE 6351-01-M

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17 CFR Part 1

Policy Statement and Establishment of Definitions of "Small Entities" for Purposes of the Regulatory Flexibility Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Policy statement and final establishment of definitions.

SUMMARY: The Commodity Futures Trading Commission has issued a policy statement and established certain final definitions of small entities which the Commission will use in connection with future rulemaking proceedings. The definitions will be used in accordance with the provisions of the Regulatory Flexibility Act, which requires that agencies, in proposing rules, consider their impact on small business. These definitions concern the following categories of entities regulated by the Commission: Contract markets, futures commission merchants (FCMs), commodity pool operators (CPOs), commodity trading advisors (CTAs), floor brokers and large traders. Pursuant to the definitions, designated contract markets and registered futures commission merchants and commodity pool operators will not be considered small entities. Consideration as to which commodity trading advisors, floor brokers and non-registered futures commission merchants are small entities will be addressed in the context of specific rule proposals affecting those entities. In adddition, those business concerns which are large traders in commodity futures would not be considered small entities for purposes of the Commission's large trader requirements.

EFFECTIVE DATE: April 30, 1982.

FOR FURTHER INFORMATION CONTACT: Nancy E. Yanofsky, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, Telephone: (202) 254–5716.

SUPPLEMENTARY INFORMATION: On April 29, 1981, the Commission proposed definitions of "small entities" for purposes of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601, *et seq.* ("RFA"). See 46 FR 23940 (Apr. 29, 1981). The RFA requires each Federal agency to consider in the course of proposing and promulgating substantive rules, the effect of those rules on small entities. A small entity is defined to include, *inter alia,* a "small business" and a "small organization." 5 U.S.C. 601(6).[1]

The Commission's proposal relating to the definitions of small entity was premised on the limited usefulness, for Commission purposes, of the size standards for small business currently in use by the Small Business Administration ("SBA"). After consultation with the Office of Advocacy of the SBA [2] and consideration of the comments received from the public on the proposed definitions, the Commission is now establishing final definitions of small entities.

1. Contract Markets

In its proposal, the Commission stated that it did not consider any contract market designated under the Commodity Exchange Act ("Act") to be a "small entity" for purposes of the RFA. The Commission's views were based on considerations relating to the central role played by contract markets in the regulatory scheme concerning futures trading.[3] The Commission also considered the high volume of transactions on boards of trade which have been designated by the Commission as one or more contract markets and the large number of employees employed by the boards of trade.

There are currently eleven boards of trade which have been designated by the Commission as contract markets to trade specific commodities. Two of those submitted comments to the Commission. The first one, which is one of the nation's smaller exchanges, did

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[1] Generally, "small businesses" are for-profit organizations and "small organizations" are not-for-profit organizations. See 5 U.S.C. 601 (3) and (4). Almost all of the entities regulated by the Commission are organized and operated as for-profit organizations. Accordingly, the Commission's definitions primarily relate to defining "small business." Nonetheless, a few of the entities regulated by the Commission, *e.g.*, certain commodity exchanges that have been designated as contract markets to conduct future trading, are organized as not-for-profit organizations. Where appropriate, the Commission's definitions of "small entity" include "small organizations," as well as "small businesses."

[2] Section 601(3) of the RFA, 5 U.S.C. 601(3), requires agencies to consult with the Office of Advocacy of the SBA prior to establishing definitions of "small business." In its comment letter to the Commission, the Office of Advocacy did not object to the Commission's proposed definitions. Rather, recognizing that regulation of commodity futures trading is still relatively new, it chose not to comment specifically on the Commission's proposed definitions. The Office of Advocacy recommended, however, that the Commission review the definitions upon the anniversary date of the Commission's regulations governing each category of regulated entity. In this regard, the Commission intends to review these definitions in conjunction with its periodic review of rules relating to these entities. See 5 U.S.C. 610 and the Commission's Plan for Periodic Review of Rules, 46 FR 29952 (June 4, 1981).

[3] Congress, in requiring regulation of the futures industry, found, *Inter alia,* that futures transactions, "as commonly conducted on boards of trade * * * are carried on in large volume by the public generally," that prices involved in such transactions on boards of trade are disseminated nationally and internationally for purposes of price determination and that futures transactions are used by enterprises in interstate commerce for hedging purposes. Section 3 of the Act, 7 U.S.C. § 5 (1976). Because of the inportance of futures trading to the national economy, a board of trade, which is defined in section 2(a)(1) of the Act, 7 U.S.C. 2 (Supp. IV 1980), as "any exchange or association * * * of persons who shall be engaged in the business of buying or selling any commodity * * *," may be designated as a contract market only if it meets the stringent requirements set forth in Section 5 of the Act, 7 U.S.C. § 7 (1976). Once designated, it must comply with additional requirements set forth in Section 5a of the Act, 7 U.S.C. 7a (1976 and Supp. IV 1980). No futures contracts may be executed except through contract market members, on or subject to the rules of a contract market. Sections 4 and 4h of the Act, 7 U.S.C. 6 and 6h (1976).

See Report of the committee on Agriculture and Forestry, United States Senate, 93d Cong., 2d Sess., on the Commodity Futures Trading Commission Act of 1974, p. 126 (Nov. 15, 1974):

"A fundamental purpose of the Commodity Exchange Act is to insure fair practice and honest dealing on the commodity exchanges and to provide a measure of control over those forms of speculative activity which too often demoralize the markets to the injury of producers and consumers and the exchanges themselves."

not disagree with the Commission's rationale for excluding contract markets from the definition of small business. Rather, it stated, and we agree, that the Commission "should continue to consider the effect of any proposed substantive rules on the 'effective functioning of designated contract markets' * * *" Of course, as more fully explained in note 4 below, that is an essential task of the Commission with respect to every contract market, regardless of relative size. In contrast, one of the nation's larger exchanges objected to the Commission's proposal on the ground that it would deprive contract markets of the RFA's protections. Similarly, another commentator suggested that the Commission's proposal would discourage new contract markets from entering the industry.

However, the Commission designates a board of trade as a contract market only when the exchange meets specific criteria, including expenditure of sufficient resources to maintain adequate self-regulatory programs. See Commission Guideline No. 1, concerning Economic and Public Interest Requirements for Contract Market Designation, and Commission Guideline No. 2, concerning Contract Market Rule Enforcement Programs, published at CCH Com. Fut. L. Rept. ¶6145 and ¶6430, respectivley. These criteria have not, however, presented a barrier to entry into the industry. Since these criteria were adopted in 1975, existing exchanges have received designation to trade approximately 100 new contracts. Moreover, the Commission recently designated two new boards of trade as contract markets, the New York Futures Exchange and the New Orleans Commodity Exchange, resulting in the establishment of the new futures exchanges.[4]

Therefore, the Commission believes that designated contract markets are not small entities for purposes of the RFA and is defining small entities not to include contract markets. Not only do contract markets play a vital role in the national economy, but they are required to operate as self-regulatory organizations, subject to Commission oversight, with statutory duties to enforce the rules adopted by their own governing bodies. Membership on the exchanges is expensive and includes the nation's largest brokerage houses. Accordingly, we do not believe that Congress intended contract markets to be covered by the RFA.[5]

2. Futures Commission Merchants

The Commission's proposal would also exclude registered FCMs from the definition of small entities.[6] The proposal to exclude registered FCMs is based on the fiduciary nature of FCM-customer relationships as well as the requirements that FCMs meet minimum financial requirements. See section 4f(2) of the Act, 7 U.S.C. 6f(2) (1976); 17 CFR 1.17 (1981). The minimum financial requirements established by the Commission serve to enhance the protection of customers' segregated funds and better protect the financial condition of FCMs.[7]

Two commentators have taken issue with the rationale behind the Commission's proposal, suggesting that the fiduciary nature of a registered FCM's business is not relevant to the definition of small entities. The Commission disagrees with these commentators. It is the Commission's opinion that different regulatory treatment of registered FCMs in accordance with their size would be inconsistent with the mandate of the Act. Congress has clearly mandated that only FCMs meeting minimum financial requirements should be permitted to solicit, and accept funds from, commodity customers. We believe that, for the basic purpose of protection of the financial integrity of futures trading, Commission regulations can make no size distinction among registered FCMs.[8] Accordingly, and notwithstanding the fact that some registered FCMs are smaller than others, it is the Commission's view that a registered FCM should not be considered a small business for purposes of the RFA.

3. Commodity Pool Operators

The Commission proposed, in establishing definitions of small entities for purposes of the RFA, to use its definition of CPOs exempt from registration. In this regard the Commission has recently revised Commission Rule 4.13(a), 17 CFR 4.13(a), which exempts certain commodity pool operators from the registration requirement of the Act. See 46 FR 26004 (May 8, 1981). Previously, CPOs whose pools' net assets did not exceed $50,000 and had no more than 15 participants were not required to register, although they still were obligated to comply with certain other regulations of the Commission; under the revised rule, effective July 1, 1981, the assets test for exemption has been raised to $200,000 of gross capital contributions. The revision increases the number of entities not required to register with the Commission.

Two commentators addressed the Commission's proposed definition. One commentator apparently supported the proposed definition; however, it suggested that the Commission

[4] Further, it is necessary, to accomplish the purpose of permitting new entrants into the industry, to include such boards of trade within the definition of small entity. Section 15 of the Act, 7 U.S.C. 19 (1976), requires the Commission, prior to adopting any rule or regulation, to "take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of [the] Act, * * *" the Commission, therefore, must take into consideration differences in size through the mandate of section 15, regardless of whether any of the entities it regulates are defined as small entities.

[5] Similarly, the Securities and Exchange Commission ("SEC") has stated that "it is doubtful that the Congress intended for the RFA to apply to [stock] exchanges, * * *" 46 *FR.* 19260 (Mar. 30, 1981). Nonetheless, the SEC has defined "small business" and "small organization" to include the nation's two smallest stock exchanges, which the SEC had previously exempted from certain regulatory requirements. See 17 CFR 240.0–10(e). It should be noted that the Commodity Exchange Act and the Commission's regulations contain no similar regulatory exemptions for contract markets.

[6] In general, FCMs solicit and accept orders from the public for purposes of futures trading. Pursuant to Commission Rule 1.7, 17 CFR 1.7, an FCM which trades solely for proprietary accounts is not required to register with the Commission. Propriety accounts, include, *inter alia*, house accounts, accounts of the FCM's officers, directors, owners or partners, and accounts of certain relatives and business affiliates. Rule 1.3(y), 17 CFR 1.3(y). Those FCMs which are not required to register are exempt from many of the regulatory requirements which govern registered FCMs. See, *e.g.*, Sections 4f(2) and 4(g) of the Act, 7 U.S.C. 6f(2) and 6g (1976) (financial and reporting requirements).

The Commission's proposal did not address which non-registered FCMs should be considered small for purposes of the RFA. The Commission has determined, however, that it will consider which non-registered FCMs should be considered small entities in the context of any specific rule proposals which may affect such entities. Accordingly, non-registered FCMs would be treated in a manner similar to CTAs and floor brokers.

[7] See Report of the Senate Committee on Agriculture and Forestry on Commodity Exchange Act Amendments, S. Rep. No. 947, set forth at 2 U.S. Cong. & Admin. News 1673 (1968):

"The danger to the public from [FCM] fiscal irresponsibility is obvious. The underfinanced brokerage firms have been found to be most likely to dip into customer's funds or resort to sharp trading practices to bolster their money needs.

Under the proposed amendment [Section 4f(2) of the Act], applicants for registration will be required to demonstrate reasonable capital resources * * *"

[8] Insofar as the Commission's regulations do distinguish between registered FCMs, those distinctions are based on the degree of oversight deemed necessary to insure the integrity of the market and the funds of customers, rather than the size of the FCM. Thus, the Commission's regulations require a registered FCM which is not a member of a designated self-regulatory organization, such as a contract market, to maintain a higher adjusted net capital requirement than a registered FCM which is a member of a designated self-regulatory organization. See Commission Rule 1.17(a)(1), 17 CFR 1.17(a)(1). Similarly, an FCM who does not solicit or accept funds from members of the public for commodity futures trading is subject to a lesser degree of regulation. See note 6, *supra*.

periodically review the coverage of Commission Rule 4.13(a). This suggestion is consistent with the position taken by the Commission when it expanded the exemptions provided for in Rule 4.13(a):

> * * * the Commission intends to reevaluate the dollar amount of the exemption from time to time to assure that it remains realistic.

46 FR 26006 (May 8, 1981).

The other commentator, the National Association of Futures Trading Advisors ("NAFTA"), suggested three alternatives to the Commission proposed definition: It would define as small entities either those with (1) $2 million in annual revenues (the existing SBA definition for certain service industries); or (2) $50 million in money under management (the standard proposed by the Securities and Exchange Commission to determine whether certain investment advisers are small entities); or (3) less than 25 employees (the proposed SBA definition for certain service industries). NAFTA's suggestions are derived from proposed or existing definitions of small business in the context of other industries.

It is the Commission's belief that the alternative definitions suggested by NAFTA are not appropriate for CPOs. The commodities industry is a high liquidity and low margin industry, which is not labor intensive. Further, any measure of size of a CPO should take into account the number of its customers, as well as the assets under control. As NAFTA itself points out, a revenues test would be subject to annual "flip-flops" without any "increase or decrease in the number of customers." Its proposed money under management test is set very high, even though smaller-sized pools may have a large number of participants. NAFTA's preferred test, the number of persons employed by the entity, "would appropriately deem a three person operation to be a small entity even though it manages $5,000,000 or operates a $5,000,000 pool."

The Commission believes, therefore, that the appropriate test of whether a CPO is a small entity remains that most recently considered by the Commission with respect to its registration requirements. This test takes into account the number of participants in a pool and the amount of money contributed to the pool by these participants. Moreover, by utilizing an existing Commission standard which is familiar to the industry, and for which data is currently available, the Commission will be able to minimize any doubt concerning which CPO's are small for purposes of the RFA.

4. Large Traders

The Commission proposed that traders who hold or control positions in a significant number of futures contracts, and therefore are required to report their positions and released information to the Commission, not be considered small entities within the meaning of the RFA. The Commission considered the size of a trader's position to be the only appropriate test for purposes of large trader reporting. One commentator pointed out that while some large traders "may be in a position to report * * * positions continuously throughout the year" other traders "may only become 'large' for purposes of reporting positions once a year." This is, of course, correct, but this we consider an effective size distinction, *per se,* since the reporting burden on the occasional large trader is by definition smaller than the reporting burden on the continuous large trader. Moreover, the Commission has recently revised its regulations to require large trader reports only on special call from the Commission. 46 FR 59960 (Dec. 8, 1981).[9]

5. Commodity Trading Advisors and Floor Brokers

The Commission did not propose definitions of small entities with respect to CTAs and floor brokers, but requested comment as to suitable definitions for these categories. One commentator agreed with the Commission that CTAs encompass a broad category of business enterprises and supported the Commission's view that analysis of what constitutes small entities should depend on the nature of the proposed rule and its impact on any specific type of CTA. NAFTA, however, believes that failure to adopt a general definition of small entities for CTAs "evade[s] the issue" and suggests that one of the alternative tests it offers for CPOs be adopted for CTAs as well. For the reasons discussed above with respect to CPOs, the Commission does not believe that any of the tests propounded by NAFTA are suitable. The Commission continues to believe that adequate consideration of a CTA's size should directly relate to the nature of any rule proposal which affects CTAs. For example, a proposed rule may concern only those CTAs who publish commodities advice for clients or, on the other hand, may affect only those CTAs who manage specific accounts for clients. Since this category remains too broad for general definition, the Commission believes that it is more appropriate to consider on a case-by-case basis which CTAs should be deemd small under the RFA.

With respect to floor brokers, one commentator stated some floor brokers, including those who conduct their brokerage business as individuals, should be considered small businesses within the meaning of the RFA.[10] That commentator, however, offered no definition of small entities with respect to floor brokers, and as in the case of CTAs, the Commission believes that definitions for this category should be in the context of any rule proposals specifically affecting them.[11]

List of Subjects in 17 CFR Part 1

Commodity exchanges, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

§ 1.3 [Amended]

Accordingly, pursuant to section 601(3) and (4) of the Regulatory Flexibility Act, 5 U.S.C. 601(3) and (4), the Commission hereby amended § 1.3 of Part 1 of Chapter 1 of Title 17 of the Code of Federal Regulations by adding the following Note to follow the text of that section:

Note.—Concerning Policy Statement and Establishment of Definitions of "Small Entity" for Purposes of the Regualtory Flexibility Act: The Commission has issued a policy statement and established certain definitions of "small entity" for purpose of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The policy statement and definitions, which will be used by the Commission in rulemaking proceedings, appear at 47 FR—— (April 30, 1982).

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[9] The large trader reporting requirements are set forth at 17 CFR Parts 15 and 18 (1981). The Commission further notes, in this connection, that it has recently substantially raised reporting levels, thus significantly reducing regulatory burdens on large traders. 46 FR 15132 (Mar. 4, 1981).

[10] The Office of Advocacy of the SBA similarly commented that floor brokers who act as individuals, as opposed to business entities, should be included in any definition of small floor broker which the Commission may adopt in the future. In light of the fact that the RFA, as adopted, does not apply to "individuals," *compare* S. 299, 96th Cong., 1st Sess. (Jan. 31, 1979), the Commission questions whether Congress intended the RFA to apply to floor brokers who act as individuals. Nonetheless, in any future rule proposal affecting floor brokers, the Commission will consider which floor brokers, whether they act as individuals or have established a formal business entity, should be deemed small.

[11] At present, the Commission has very few rules specifically concerning floor brokers. See, *e.g.*, Commission Rules 1.35(c)–(d), 1.38, 1.39, 20.00, and 155.2, 17 CFR 1.35(c)–(d), 1.38, 1.39, 20.00, and 155.2.

Issued in Washington, D.C. on April 23, 1982, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 82-11663 Filed 4-29-82; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141 and 142

Proposed Amendments to the Customs Regulations Relating to Importations of Certain Large Machines

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations relating to the importation of large machines. The proposal would allow an importer to request in writing that certain machines, which because of their immense size and other factors are imported in separate shipments, be classified and dutiable as a complete machine under its particular item number in the Tariff Schedules of the United States. The importer's request would be subject to approval by the Commissioner of Customs. Presently, parts or components of a complete machine which are imported in separate shipments are classifiable and dutiable as parts or components rather than as a complete machine. The action is necessary to give full effect to the specific provision in the Tariff Schedules for the named machine.

DATES: Comments must be received on or before June 29, 1982.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: James A. Seal, Classification and Value Division (202-566-8181). Operational Aspects: Herbert H. Geller, Duty Assessment Division (202-566-5307). U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

The Administrative Procedure Act provides that each agency shall give an interested person the right to petition for the issuance of a rule (5 U.S.C. 553(e)). The Customs Service has received a petition from a member of the public regarding the tariff classification of Fourdrinier papermaking machines. After due consideration, Customs has determined that a notice of proposed rulemaking is appropriate in this instance and the document which follows was prepared in response to that request.

All merchandise imported into the customs territory of the United States is subject to duty or duty-free entry in accordance with its classification under the applicable item in the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). The TSUS is divided into various schedules, parts, and subparts, separately dealing with merchandise in broad categories.

The present Customs Service practice is to treat large machines imported in several shipments as a series of separate articles for the purpose of tariff classification. This practice is in accord with the present limitation on the longstanding judicial "doctrine of entireties," that merchandise imported in more than one shipment cannot be classified as an entirety, but rather that each shipment is classified separately. Tariff classification and duty rate are determined shipment by shipment. As a result, in some cases a very large machine imported in several shipments will not be classified under a named provision in the TSUS for the machine. Rather, each part or component will be classified under the TSUS item that most specifically describes the particular part or component.

For example, Schedule 6, Part 4, Subpart D, TSUS sets forth the item numbers and rates of duty for pulp and paper machinery, bookbinding machinery, and printing machinery. TSUS item number 668.00 specifically pertains to machines for making cellulosic pulp, paper, or paperboard, *e.g.*, Fourdrinier papermaking machines which are within the scope of this proposal.

The modern Fourdrinier papermaking machine is actually a composite of numerous interrelated machines, each performing a specialized operation in the process of producing a finished paper or board product from pulp. The typical Fourdrinier papermaking machine as installed, and independent of the building housing it, weighs as much as 10,000,000 pounds and occupies as much as 2,310,000 cubic feet. While many of the subsections are assembled by the manufacturer, industry practice is that larger components are assembled after delivery to the site and not prior to shipment.

According to an importer of those machines, the primary reasons for assembly at the site are:

1. A customer could not, in a short period of time, erect an entire machine at a site even if the machine was delivered in a single shipment. Great care must be exercised in erecting a papermaking machine to ensure that each of the components interfaces properly. The first machine component erected is normally the first dryer cylinder which is positioned at about the center of the machine. The other components are installed progressively "upstream" and "downstream" from the first dryer cylinder.

2. The size of many components prevents shipment as a unit. A single dryer cylinder six feet in diameter, having walls four inches thick and a length of 420 inches with journals and housings attached, will weigh about 56,000 pounds. A typical dryer section will consist of as many as 100 such cylinders. An assembled dryer section occupies a space 50 to 60 feet in width, 20 feet high and hundreds of feet long. Thus, it has been represented to Customs that "it is impossible to transport an assembled dryer section." This demonstrates the practical difficulty of assembling or even gathering the components of an entire machine in one place and finding a vessel large enough and with sufficient available space to transport it.

3. Manufacture of the machine can only be accomplished over an extended period of time. Even the largest manufacturers have facilities capable of casting only two cylinders per day. Thus, the dryer section of a typical machine (100 cylinders) requires ten weeks for casting alone. More complex components, such as drilled suction rolls, require greater time.

4. Erection of a papermaking machine is a time consuming process. The time span between erection of the first dryer cylinder and the initial production run is at least eight months and frequently as long as two years.

5. The significant periods of time necessary to manufacture and later to erect papermaking machines prohibit the usual commercial sequence, *i.e.*, manufacture, delivery, erection. In the papermaking machine industry, components are manufactured, delivered, and erected in a specific order. Some components have yet to be manufactured while others are being erected at the site.

As a matter of practice, Fourdrinier papermaking machines purchased under a single contract but imported in many shipments because of their immense size

and manufacturing schedule have not been classified for tariff duty purposes under the single TSUS item number, 668.00, that describes the entire machine with greatest specificity.

Accordingly, to correct this and similar situations and to give full meaning to item 668.00, and other named items in the TSUS, it is proposed to amend Parts 141 and 142, Customs Regulations (19 CFR Parts 141, 142), relating to the entry and classification of very large machine components to allow an importer to request in writing that the entire (assembled) machine be classified under the specific TSUS item. The importer's request would be subject to approval by the Commissioner of Customs. If an importer of a large machine imported in separate shipments chooses to request Customs to classify the machine as an entirety, the importer must deposit estimated duties covering the appraised value of the entirety at the time of filing the entry summary for the initial shipment (19 U.S.C. 1484, 1505). This proposal would constitute an extension of the judicial "doctrine of entireties" which Customs believes justified by the unique nature of Fourdrinier papermaking machines, and other large machines, as described above.

Authority

These amendments are proposed under the authority of R.S. 251, as amended, sections 315, 448, 484, 505, 624, 46 Stat. 695, as amended, 714, as amended, 722, as amended, 759, 77A Stat. 14 (19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1315, 1448, 1484, 1624).

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Executive Order 12291

The document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Secretary of the Treasury certifies that the proposed regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, these regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

In particular, Customs Office of Economic Analysis has determined that the Fourdrinier papermaking machinery in question is not manufactured by a substantial number of small entities, and that the proposal will not have a significant economic impact on those that do. In addition, the proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities; impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities; or generate significant interest or attention from small entities through comments, either formal or informal.

Drafting Information

The principal author of this document was Todd J. Schneider, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects

19 CFR Part 141

Explosives, imports, Lawyers.

19 CFR Part 142

Canada, Imports, Mexico.

Proposed Amendments

It is proposed to amend Parts 141 and 142, Customs Regulations (19 CFR Parts 141, 142), in the following manner:

PART 141—ENTRY OF MERCHANDISE

1. Section 141.69 would be amended by adding a new paragraph (d) to read as follows:

§ 141.69 Applicable rates of duty.

* * * * *

(d) *Large machines.* (1) At the written request of the importer, successive shipments of components of a large machine which, after assembly in the United States at the site of proposed use, constitute a complete machine, may be dutiable as an entire machine at the rate in effect at the time of entry of the initial shipment. The importer's request for such treatment must be approved by the Commissioner of Customs before the initial shipment of the merchandise.

(2) This provision shall be limited to a large machine which is:

(i) Sold as a unit pursuant to a single contract of sale;

(ii) Entered at one port;

(iii) Entered in its entirety within three years of the date of entry of the initial shipment;

(iv) Comprised of three or more shipments, and the combined shipments weighing at least 1,000 tons; and

(v) Commercially infeasible to import in a single shipment because of size and method of manufacture, and which will be assembled at the domestic site of permanent use.

(3) If an importer of a large machine requests appraisement and classification of that machine as an entirety, the importer shall:

(i) File an entry summary in accord with § 142.17(a)(5) of this chapter; and

(ii) Deposit estimated duties on the appraised value of the entire machine at the time of filing the entry summary for the initial shipment in accord with § 141.101(f) of this chapter.

2. The heading of § 141.82 and paragraph (a) of that section would be revised to read as follows:

§ 141.82 Invoice for installment shipment.

(a) *One invoice sufficient.* Installments of a shipment covered by a single order or contract and shipped from one consignor to one consignee may be included in one invoice if the installments arrive at the port of entry by any means of transportation within a period not to exceed 10 consecutive days. The foregoing 10-day limitation does not apply to the entry of shipments of a large machine in accordance with section 141.69(d).

* * * * *

3. Section 141.101 would be amended by adding a new paragraph (f) to read as follows:

§ 141.101 Time of deposit.

* * * * *

(f) *Entry of large machines.* In the case of a large machine entered in accordance with § 141.69(d) of this part, the importer shall deposit estimated duties on the appraised value of the entire machine at the time the entry summary for the initial shipment is filed with the appropriate Customs officer.

PART 142—ENTRY PROCESS

1. Paragraphs (a)(4) and (b)(4) of § 142.17 would be revised to read as follows:

§ 142.17 **One entry summary for multiple entries.**

(a) *Requirements.*

* * * * *

(4) The time between the date of the first entry and the date of the last entry does not exceed one week (but see paragraph (d) of this section),

* * * * *

(b) *Merchandise not eligible.*

* * * * *

(4) Merchandise for which liquidation has been withheld (but see paragraph (d) of this section), and

* * * * *

2. A new paragraph (d) would be added to § 142.17 to read as follows:

§ 142.17 **One entry summary for multiple entries.**

* * * * *

(d) *Large machines.* The limitations expressed in paragraphs (a)(4) and (b)(4) of this section do not apply to entries of the components of a large machine made in accordance with the provisions of § 141.69(d) of this part.

William von Raab,

Commissioner of Customs.

Approved: April 21, 1982.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 82-11838 Filed 4-29-82; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 660

[Docket No. 81N-0417]

Additional Standards for Anti-Human Globulin Serum

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to establish additional standards for Anti-Human Globulin Serum. The proposed additional standards include the provisions of the existing minimum requirements as well as changes and additions that reflect more recent experience and scientific knowledge in the use of Anti-Human Globulin Serum.

DATES: Written comments by June 29, 1982. The proposed effective date of the final rule is 180 days after the date of its publication in the **Federal Register.**

ADDRESS: Comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Bureau of Biologics (HFB-620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION: Anti-Human Globulin Sera consist of sterile preparations of sera or protein-rich fluids containing one or more antiglobulin antibodies. The preparations are usually produced by injecting rabbits or other animals with human proteins, or from immunoglobulin-secreting cell lines. The preparations are used as reagents in antiglobulin tests to demonstrate that red blood cells have been coated with immunoglobulin molecules or complement components.

Antiglobulin tests may be direct or indirect. The direct antiglobulin test detects in vivo coating of red blood cells. Direct antiglobulin testing is used, for example, in the diagnosis of hemolytic disease of the newborn, investigation of transfusion reactions, detection of drug-induced red cell sensitization, and detection of antibodies in autoimmune hemolytic anemia. The indirect antiglobulin test detects antibodies that are present in the individual's serum or plasma. Indirect antiglobulin testing is used, for example, in compatibility testing, donor and patient screening for unexpected antibodies, and in the detection of antigens.

Under section 351 of the Public Health Service Act (42 U.S.C. 262), biological products, including Anti-Human Globulin Sera, offered for sale in interstate commerce must be licensed and meet certain standards that ensure their continued safety, purity, efficacy, and potency. Product licenses for Anti-Human Globulin Sera were first issued based on compliance with "Minimum Requirements: Anti-Human Serum for the Anti-Human Globulin Test" published in 1949 by the Division of Biologic Standards of the National Institutes of Health (precusor of FDA's Bureau of Biologics). These requirements were amended in 1960 and supplemented by guidelines published in 1977 by FDA.

The agency now proposes to publish additional standards for Anti-Human Globulin Sea based on a review of existing product licenses, minimum requirements, and guidelines to reflect current scientific knowledge. These proposed additional standards would amend Part 660 (21 CFR Part 660) by adding a new Subpart F to include the provisions of the existing minimum requirements and guidelines for Anti-Human Globulin Sera. The proposed additional standards also contain changes and additions that reflect more recent experience and scientific knowledge in the field.

1. In proposed § 660.50 (21 CFR 660.50), the proper name of the product is changed from Anti-Human Serum to Anti-Human Globulin Serum to describe the product more accurately.

2. In proposed § 660.51(a)(3) and (4) (21 CFR 660.51(a)(3) and (4)), a lot and sublot of Anti-Human Globulin Serum are defined. The current guidelines do not contain these definitions.

3. The Bureau of Biologics will supply reference Anti-Human Globulin Sera to licensed manufacturers, as stated in proposed § 660.52 (21 CFR 660.52). Anti-IgG and anti-C3d reference sera shall be used to determine the potency of Anti-Human Globulin Sera. The reference sera are not mentioned in the current guidelines or in the current minimum requirements for Anti-Human Serum labeling and lot release requirements because the reference sera were not available when these documents were published. However, the anti-IgG reference serum has been used by all manufacturers since November 1977, and the anti-C3d reference serum has been used by all manufacturers for testing all lots manufactured since October 1980.

4. In proposed § 660.54 (21 CFR 660.54), the tests for anti-IgG activity in the existing minimum requirements have been expanded and modified to include reference to detailed potency test procedures. However, the procedures proposed are the same as those currently used by all manufacturers for potency evaluation with anti-IgG reference serum.

5. In proposed § 660.54, additional tests are required for nonspecific properties to detect unwanted antiglobulin activity such as excessively high titers of anti-C3d or anti-C4d which may cause agglutination of normal cells which have been refrigerated in their own serum.

6. The 1977 guidelines noted that the anti-C3d component of Anti-Human Serum might be less stable than the anti-IgG component. Consequently, the Bureau of Biologics required stability testing of anti-C3d every 3 months throughout the dating period of the sera. This requirement has been omitted from the proposed rule since recent scientific data show that anti-C3d activity is not less stable than the anti-IgG component.

The agency has examined the economic consequences of this proposed rulemaking and has determined that it