

**AWP CA E5 Lakeport, CA [New]**

Sutter Lakeside Hospital Heliport

Point In Space Coordinates

(Lat. 39°06'09"N, long. 122°53'19"W)

That airspace extending upward from 700 feet above the surface and within a 5-mile radius of a Point In Space serving the Sutter Lakeside Hospital Heliport, excluding that portion within the Santa Rosa, CA, Class E airspace area.

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Issued In Los Angeles, California, on August 2, 1999.

**John Clancy,**

Manager, All Traffic Division, Western-Pacific Region.

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**COMMODITY FUTURES TRADING COMMISSION****17 CFR Parts 3 and 32****Trade Options on the Enumerated Agricultural Commodities**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rulemaking.

**SUMMARY:** In April 1998, the Commodity Futures Trading Commission (Commission or CFTC) removed the prohibition on off-exchange trade options on the enumerated agricultural commodities subject to a number of regulatory requirements. The Commission has reconsidered several of these requirements with a view toward streamlining regulatory or paperwork burdens in order to increase agricultural trade option's commercial utility while maintaining basic customer protections. In particular, the Commission is proposing to streamline the registration requirements for Agricultural Trade Option Merchants (ATOMs) and their sales agents by, among other things, removing the training requirement for associated persons and limiting the number of principals that must certify that they are not subject to statutory disqualification from registration. In addition, the Commission is proposing to permit cash settlement and offset or cancellation of agricultural trade options, by removing the requirement that such options, if exercised, must result in physical delivery. The Commission is also proposing to eliminate the currently required transaction-specific disclosure statement and to revise the summary disclosure statement provided to customers when opening an account. The Commission is proposing to

streamline certain reporting and recordkeeping requirements, as well.

**DATES:** Comments must be received by September 30, 1999.

**ADDRESSES:** Comments should be mailed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat; transmitted by facsimile at (202) 418-5521; or transmitted electronically at [secretary@cftc.gov]. Reference should be made to "Agricultural Trade Options."

**FOR FURTHER INFORMATION CONTACT:** Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418-5260, or electronically at [PArchitzel@cftc.gov].

**SUPPLEMENTARY INFORMATION:****I. Background**

Generally, the offer or sale of commodity options is prohibited except on designated contract markets. 17 CFR 32.11. One of several specified exceptions to the general prohibition on off-exchange options is for "trade options." Trade options are off-exchange options "offered by a person having a reasonable basis to believe that the option is offered to" a person or entity within the categories of commercial users specified in the rule, where such commercial user "is offered or enters into the commodity option transaction solely for purposes related to its business as such." 17 CFR 32.4(a). However, this exception from the general ban on off-exchange options does not apply to trade options on the agricultural commodities enumerated in the Commodity Exchange Act (Act).<sup>1</sup> 7 U.S.C. 1a(3).

<sup>1</sup> In 1936, responding to a history of large price movements and disruptions in the futures markets attributed to speculative trading in options, Congress completely prohibited the offer or sales of option contracts both on and off exchange in the specific list of agricultural commodities enumerated in the Act. After its creation in 1974, the Commission promulgated a comprehensive regulatory framework applicable to off-exchange commodity option transactions in the non-enumerated commodities. This comprehensive framework exempted "trade options" from most of its provisions except for a rule prohibiting fraud (rule 32.9). In contrast, the prohibition on the offer and sale of all options on the enumerated agricultural commodities remained as a consequence of both statutory provision and Commission rule. The statutory bar was repealed as part of the Commission's reauthorization in 1982. Public Law No. 97-444, 96 Stat. 2294, 2301 (1983). A full statement of the statutory and regulatory history is provided in the notice of final rulemaking promulgating the interim final rules. 63 FR 18821 (April 16, 1998).

In April, 1998, the Commission promulgated interim final rules to permit the trading of agricultural trade options subject to various regulatory requirements. 63 FR 18821 (April 16, 1998). These requirements were designed to provide a number of customer protections. They included provisions for registration of ATOMs, disclosure of risks to option buyers, financial safeguards, and recordkeeping. In addition, option vendors were required to have a system of internal controls and to report to the Commission on their option activity. The rules also included a number of provisions to discourage the use of trade options for speculative purposes. These included the requirement that agricultural trade options, if exercised, be physically delivered, and limitations on producers granting options, including prohibiting producers from writing covered call options.

No one has applied for registration as an ATOM since the interim rules went into effect in June, 1998. Reportedly, agricultural trade options are being offered to some extent pursuant to the rules' exemption for high net worth entities. However, because there are no reporting requirements for options offered pursuant to the exemption, the Commission cannot ascertain to what extent such options are being traded between exempt entities.

The current lack of interest in offering these instruments could well be a result of the current depressed prices for many commodities.<sup>2</sup> However, some observers have suggested a different explanation for the lack of interest in these instruments. Various agricultural groups have voiced concern that the interim

<sup>2</sup> In addition to low prices, lack of familiarity among many in the agricultural sector with risk management techniques generally and agricultural trade options, specifically, may also have hampered development of demand for trade option products. To address this, widespread educational efforts will be necessary to give producers a better understanding of what the instruments are and how to use them safely. To this end, the Commission recently released three educational pamphlets on agricultural trade options prepared by its Division of Economic Analysis. These pamphlets provide an overview of agricultural trade options and the rules for trading them. The first of these brochures, entitled "Agricultural Trade Options—What Agricultural Producers Need to Know," was issued in December 1998. This brochure acquaints agricultural producers with how they can use agricultural trade options to manage risk. The second and third brochures, issued in February 1999, summarize how to become an agricultural trade option merchant and provide general information to lenders and extension agents, respectively. They are entitled "How to Become an Agricultural Trade Options Merchant," and "Agricultural Trade Options—Information for Lenders and Extension Agents." All three of these brochures are available on the Commission's website.

final rules are too onerous, thereby discouraging participation. Particular concerns have been raised that the registration, reporting and disclosure requirements are too burdensome and that certain of the restrictions on the form of options that producers may enter into limit their usefulness. These groups maintain that if the regulatory requirements were relaxed agricultural trade options would be offered more readily.

In issuing the interim final rules, the Commission noted that the rules were an experiment and that the Commission "has not foreclosed reconsideration of any specific issue." 62 FR 18823. In this regard, since the rules' promulgation, a number of groups have recommended the the Commission reconsider various aspects of the current rules. The Commission receives the views of a cross-section of the agricultural sector through its Agricultural Advisory Committee (AAC). The AAC, at its most recent meeting on April 21, 1999, heard presentations on the agricultural trade option rules by representatives of the National Grain and Feed Association (NGFA) and the National Introducing Brokers Association. AAC members then engaged in a detailed discussion of various possible rule alternatives and the policy issues that such alternatives would raise. Subsequently, nine organizations representing a broad cross-section of production agriculture submitted to the Commission their common views on these issues by letter dated April 23, 1999.<sup>3</sup>

The dialogue over the interim final rules has not resulted in a unified industry-wide view on recommended changes to those rules. Nevertheless, seven letters were submitted to the Commission recommending various changes. These include the April 23 letter from the nine producer organizations, a letter dated April 19, 1999 from the Farm Credit Council, a letter dated April 21, 1999, from the Illinois Farm Bureau, a letter dated June 15, 1999, from the NGFA, a letter dated June 16, 1999, from the Chicago Board of Trade (CBT), a letter dated July 9, 1999, from the National Grain Sorghum Producers and a letter dated August 9, 1999, from the American Farm Bureau Federation, the National Association of Wheat Growers, the American Soybean

Association and the National Farmers Union.<sup>4</sup> Based in part on the various views expressed in these letters, the Commission is proposing a number of revisions to the interim final rules.

## II. Proposed Revisions to the Agricultural Trade Option Rules

The Commission has reconsidered a number of the requirements of the agricultural trade option rules with a view toward maintaining their basic customer protection while increasing the commercial utility of the instruments or trading strategies permitted and streamlining regulatory or paperwork burdens. The Commission specifically revisited the particular rules relating to the registration requirements and procedures for ATOMs and their sales agents (associated persons or APs), whether physical delivery should be required upon exercise of the option, whether producers should be able to write call options, whether a different form of risk disclosure would be more appropriate and whether the \$10 million exemptive level should be changed. The Commission also considered a number of additional revisions to reduce paperwork and reporting burdens or to bring certain contracting requirements into closer alignment with certain cash market practice. An analysis of each of these issues follows.

### A. Registration

The requirement that all market professions be registered, and the authority to approve or revoke registrations, is an important means of policing conduct in a market. The requirement that market professionals be registered gives the Commission an important tool for protecting customers. Registration of market professionals helps assure customers of the registrant's probity, and a testing or training requirement helps ensure a minimum level of competency. Every commodity professional, unless excluded or exempted, that deals with a member of the public is required to be registered with the Commission.

As part of these customer protections, section 14 of the Act provides that "any person complaining of any violation of any provision of this Act or any rule . . . issued pursuant to this Act by any

person who is registered under this Act" may bring a reparations action therefore the Commission. Accordingly, complaints that do not relate to violations of the Act or Commission rules are not subject to Commission reparations proceedings. A dispute arising solely out of a cash market transaction, therefore, would be dismissed and not be heard the Commission. See 17 CFR 12.26.

By long-standing rule (17 CFR 180.3(b)(3)), the Commission does not permit a customer to waive the right to seek reparations through a predispute arbitration agreement. However, if the customer declines to institute reparations proceedings, the claim or grievance is subject to such a preexisting arbitration agreement.

NGFA, in particular, supports an alternative means of qualification to offer or solicit agricultural trade options short of registration so that its members would not be subject to the Commission's reparations authority. NGFA provides an arbitration service to resolve cash grain contract disputes involving its members, and supports its members' right to require customers through account opening agreements to use NGFA arbitration as the sole means to resolve disputes involving agricultural trade options. In contrast, several producer organizations support the registration requirement as a means "to protect customers and reduce the likelihood that unscrupulous individuals will qualify as agricultural trade options merchants" preferring that "a full range of dispute resolution options . . . remain available to contract participants ranging from arbitration under industry trade rules to CFTC reparations actions." See letter of April 23. See also letters of July 9 and August 9, 1999.

It appears that there may be substantial public support for a registration requirement, both because of the higher level of customer protection it provides, and a desire to have available the Commission's reparations forum for dispute resolution. Although some sectors of agriculture may have well-regarded industry arbitration fora available, many do not. For these sectors, reparations may be the only readily available non-judicial avenue for dispute resolution. Accordingly, the Commission is retaining the registration requirement at this time. However, the Commission certainly would consider deleting the registration requirement in favor of a simple notification filing stating one's intent to enter into the trade option business if that alternative is preferred by those whom the regulations are

<sup>3</sup> These nine producer organizations include the: (1) American Farm Bureau Federation, (2) National Association of Wheat Growers, (3) National Corn Growers Association, (4) National Farmers Union; (5) National Pork Producers, (6) American Soybean Association, (7) National Cattlemen's Beef Association, (8) National Cotton Council of America, and (9) National Grain Sorghum Producers.

<sup>4</sup> In addition, various views concerning the interim final rules were expressed by participants in the United States Senate Agriculture, Nutrition and Forestry Committee's (Senate Agriculture Committee) roundtable to discuss futures, derivatives and related public policy issues held on February 25 and 26, 1999 and by witnesses at the committee's hearings to examine crop insurance and risk management strategies held on March 10 and 17, 1999.

intended to protect. The Commission specifically invites comments on whether the registration requirement should be retained.<sup>5</sup>

Despite this fundamental disagreement over whether registration should be required, there is broad agreement that the registration procedures for ATOMs and their sales agents be streamlined and simple. Unlike other categories of registrants, under current rules an ATOM's principals and sales agents need not provide fingerprints or pass a proficiency test. In other respects the registration requirements are similar to those for other Commission registrants, including processing of registration applications by the National Futures Association (NFA), the requirement that each applicant certify that it is not disqualified from engaging in a commodity-related business under the statutory disqualification provisions of sections 8a(2) or 8a(3) of the Act and the requirement that an ATOM certify that, to the best of its knowledge, each of its associated persons meets the final rules' registration requirements. Those seeking registration as associated persons are required to complete six hours of instruction in the requirements of the Act and the rules thereunder, the economic functioning and risks of agricultural trade options, and the registrant's responsibility to observe just and equitable principles of trade relating to such options.

The Commission is proposing to streamline registration of ATOMs and their APs by removing the requirement that ATOMs separately certify the truth of their principal's and APs' applications. The Commission also proposes to limit the principals required to file as part of an ATOM's application to those principals who exercise direct control over the ATOM's business affairs. For an ATOM that is part of a larger agribusiness, this should greatly lessen the number of principals who are required to file. This is because, unlike financial service companies that commonly use a holding company structure, many companies engaged in agriculture are structured as unitary corporations with separate operating divisions, potentially increasing the number of principals within the organization.

<sup>5</sup> The Commission is also proposing to clarify the enforceability of pre-dispute arbitration clauses for agricultural trade options and the procedures by which customers can waive their right to use Commission reparations procedures to resolve disputes with an ATOM by incorporating into these rules streamlined procedures similar to those included in Commission Rule 180.3(b) which are applicable to other commodity professionals.

The Commission is also proposing to delete the mandatory six hour training course for sales agents. The offer or sale of agricultural trade options is not expected to be the primary commercial activity for many, if not most ATOMs, increasing the relative burden of the mandatory training requirement. Instead, each ATOM would decide the amount and nature of training it will require of its sales agents, presumably based upon the nature of its trade option business.

In addition, paperwork associated with the registration process could be streamlined by deleting the requirement that ATOMs notify the Commission when an associated person leaves its employ and a new associated person begins. Because many ATOMs may employ individuals well-known in their local communities, such filings may be less necessary. On the other hand, staff turnover at such locations would tend to be low, reducing the burden of filing updates on affiliated staff. Some ATOMs may employ widely dispersed sales forces and may prefer to have a means of providing public notice of their officially authorized sales agents through such updates. Accordingly, the Commission is not now proposing to delete the requirement that ATOMs notify the NFA when an associated person leaves its employ or is hired. However, it specifically requests commenters to address the relative burden and benefits of this requirement.

Finally, NGFA, in particular, suggests that the Commission directly process applications for registration as an ATOM or an AP of an ATOM, an administrative task that the interim final rules delegate to the National Futures Association. 17 CFR 3.13(e). NGFA suggests that, "it is inappropriate to involve the NFA in any form of 'registration' process. . . . The NFA is a self-regulatory agency for futures, not cash markets." However, the interim final rules strictly limit NFA's role. NFA does not become a self-regulatory authority for ATOMs simply by administratively processing their registration applications on the Commission's behalf. NFA exercises no regulatory authority over the offer or sale of agricultural trade options by ATOMs as a consequence of that administrative function, nor do ATOMs or their APs thereby become members of NFA.<sup>6</sup>

<sup>6</sup> This is similar to floor brokers and floor traders, whose registration applications are processed by NFA but who do not become NFA members and are not regulated by NFA. Rather, they are generally governed by the exchanges that have granted them trading privileges.

Moreover, the Commission faces a number of challenges in directly processing applications for registration of ATOMs and their APs. The Commission completely transferred this administrative function to NFA during the 1980s and no longer has systems in place to process this type of registration application. Accordingly, the Commission would have to rebuild this capability from the ground up before it could begin reviewing and approving registrations once again. Moreover, rebuilding such administrative systems would, in the short-run, compete for technical resources that are being devoted to Y2K compliance. In contrast, NFA can process these additional categories of registrants with only minor changes to its existing systems.

In light of the above, the Commission requests comment on the possible benefits to ATOMs, their APs or potential customers from the Commission's direct processing of registration applications, and the relative cost of such a proposal, including the indirect costs caused by the increased implementation time needed by the Commission to reestablish this administrative capability.

#### *B. Physical Delivery*

The interim rules prohibit agricultural trade options from being off-set, and require that if exercised, agricultural trade options result in physical delivery of the underlying commodity. The interim rules, however, permit substitution of a forward contract agreement prior to the option's expiration. Commission Rule 32.13(a)(3). This provision, by requiring agricultural trade options explicitly to serve a merchandising function, helps assure a close relationship between the agricultural trade option transaction and the producer's cash market activities. It also helps to assure that such options would be transacted between those having pre-existing cash market relationships and that their functioning would likely be easily understood. See, 63 FR at 59627.

Support is widespread among all sectors of agriculture for some permitted types of cash settlement, offset or cancellation of agricultural trade options.<sup>7</sup> The bar on cash settlement/

Moreover, NFA arbitration is only available for the resolution of disputes involving NFA members. Accordingly, NFA arbitration would not be available to ATOMs and their customers.

<sup>7</sup> Unlike forward contracts which are commercial, merchandizing transactions resulting in delivery, options can be settled in a number of ways. For example, various exchange-traded options may be settled through the delivery of a futures position,

offset was adopted, in part, to discourage speculative use of agricultural trade options by purchasers and as a means of limiting vendors to entities with a strong, on-going connection to the cash markets. On the other hand, observers have suggested many situations when cash settlement/offset would be consistent with sound business practice, such as when hail wipes out a producer's ability to deliver on an option having time-value remaining or when localized conditions may make delivery at an alternate location relatively more attractive. Others have suggested that more highly engineered option products can be offered only if cash-settlement is permitted.

Some observers have suggested that the Commission permit cash settlement/offset of agricultural trade options only as a one-time alternative to delivery. Although such a requirement would discourage speculation, it could be easily evaded simply by establishing a new option position with a second vendor or by identifying a new option as covering additional production capacity. In light of the obvious enforcement difficulties in enforcing a one-time cash-settlement rule and the likelihood that other regulatory provisions, such as the registration of ATOMs and the requirement that ATOMs be commercials, to some degree would discourage unscrupulous entities from offering, and purchasers from buying, agricultural trade options merely for speculative purposes, the Commission is proposing simply to remove the requirement that agricultural trade options, if exercised, result in physical delivery.<sup>8</sup>

However, the Commission is proposing to require ATOMs to provide customers with an account statement following the termination, cancellation, cash settlement or amendment of an

option's expiration date (rolling the contract). Customers could have expected to have their accounts settled upon physical delivery, and this proposed requirement will ensure that customers who cash settle their contracts are provided with similar information.<sup>9</sup> Moreover, by receiving an accounting and knowing with certainty the outcome of their closed position, customers should better be able to ascertain the potential outcome of entering into a subsequent transaction. In addition, the Disclosure Statement continues to advise potential purchasers that trade options are required to have a business purpose and are not to be used for speculation.

### *C. Risk Disclosure, Customer Account Information and Reports to the Commission*

The interim final rules mandate that customers be provided with both a general, summary disclosure statement upon opening an account and transaction-specific disclosures before entering into a specific transaction. Commission Rules 32.13(a) (7) and (8). The transaction-specific disclosure includes information relating to the specific terms of a particular transaction. The ATOM is required to disclose the customer's worst possible financial outcome when the option premium is not collected up front or when an option contract is amended.

There is general agreement among representatives of both potential vendors and customers that the risk disclosure mandated by the interim final rules should be streamlined and made administratively simpler by eliminating the transaction-specific disclosure statement. Many of the transaction-specific disclosures could be made in the summary disclosure statement. Others may be readily ascertainable from the face of the option contract itself. The CBT suggested that the existing statement regarding the availability of exchange-traded options offering greater regulatory and financial protections be enhanced to state explicitly that the trade option is not guaranteed in any way by a contract market.

The Commission is proposing to eliminate the transaction-specific disclosure statement and to revise the

summary disclosure to include some of the deleted material. For example, the Commission is proposing to add a paragraph to the summary disclosure statement advising customers to understand each option's procedure for exercise, time of expiration, cost (including the amount of, and method of paying, the premium) and associated fees. In addition, as noted above, the Commission is proposing that before the expiration date of a contract is amended the customer be given a current account statement. This is in lieu of the worst-case outcome disclosure which is currently required. A current account statement will provide the information necessary for the customer to determine the possible financial outcome resulting from the contract's amendment.

In addition, the Commission is proposing to amend the requirements relating to reporting of account information to customers. A number of sources, including several state-level representatives of producers and commodity first-handlers, suggested that the requirements that ATOMs provide customers with account-related information potentially created too great a paperwork burden for smaller firms. Specifically, Rule 32.13(b) requires ATOMs to provide customers with written confirmation of contracts within 24 hours of execution and within 48 hours of a customer request, a written response regarding the customer's account or position. In addition, ATOMs are required to notify customers in writing of an option's expiration within the coming calendar month. This requirement was intended to assist customers in managing their option positions and, in particular, to "provide customers with notice sufficient to reduce the occasions on which customers permit in-the-money options to expire due to inattention." 63 FR 18828.

Representatives of agricultural organizations opined that many of the required writings would be required during harvest time, when smaller businesses, including producers, would prefer the immediacy of telephonic communication over written notice. Accordingly, the Commission is proposing to increase the ATOM's flexibility in meeting these requirements by permitting oral communications and notice to customers.<sup>10</sup>

delivery of a commodity such as gold, or the payment of the option's value based upon a reference price such as the London gold fix. Cash settlement of a trade option differs from physical delivery on the option in that the option's holder, upon exercise, is paid the option's value rather than delivering the commodity at the strike price specified in the option contract.

<sup>8</sup> Although Rule 32.13(a) requires that an ATOM be a commercial involved in the production, processing or handling of the underlying commodity, the interim final rules did not limit eligibility to become an ATOM to a commodity's first handler. Nevertheless, permitting cash settlement likely will enable a greater variety of commercial enterprises engaged in agriculture to offer these contracts. The Commission therefore is proposing to clarify that eligible commercial enterprises include those selling inputs used in the production of the commodity as well as banks that routinely finance businesses involved in the production, processing or handling of the commodity.

<sup>9</sup> For example, if a customer initially purchases an option for \$1000 and later offsets that option by selling the option back to the ATOM for \$500, the customer will have to be notified that the purchase and resale of the option netted a \$500 loss. This rule would have the effect of keeping customers informed of any losses incurred on option trades and discourage them from "speculating on account."

<sup>10</sup> The Commission also is proposing to delete the requirement that the ATOM provide the option purchaser with a separate written confirmation. Elsewhere, the Commission is requiring that an executed copy of the written contract or a written confirmation of oral contracts be provided to the

Continued

Similarly, some have observed that oral contracting is still the prevailing means of transacting business in certain agricultural cash markets, and they suggest that the interim rules, which require agricultural trade option contracts to be written, should be amended to reflect that reality. In this regard, state law has recognized this practice by recognizing the validity of such oral contracts when they have been confirmed in writing. The Commission is proposing to amend its rules to recognize this practice. However in doing so, the Commission is requiring that the written confirmation, which must be signed by the ATOM, include all material terms of the option contract. In this way, option contracts can be made over the telephone, as are cash forward contracts, and both ATOMs and customers will be certain of the contract's terms, thereby reducing potential disputes between the parties over vaguely defined contract terms.<sup>11</sup>

In addition, there has been widespread support among agricultural groups for reducing ATOMs' required reports. The interim rules require ATOMs to file reports on volume and open interest four times a year with the NFA. Many claim that such a filing requirement would be onerous on small ATOMs that do not have staffs dedicated only to back office operations. In this regard, they note that one of the quarterly filings would be due during harvest, a time when smaller business are stretched thin and may have no available staff to compile such a report. They further maintain that lacking programming support, such reports would often have to be compiled manually. In addition, they prefer that such reports be filed with the Commission rather than the NFA, an organization in which they are not members. The Commission is proposing to reduce periodic reporting to one annual report, filed by the ATOM with the Commission within 90 days of the end of its fiscal year.<sup>12</sup> In that way, the

customer. Accordingly, a separate confirmation is redundant.

<sup>11</sup> As the Commission explained in its notice of proposed rulemaking, the "lack of written terms and conditions in [hedge-to-arrive] contracts led to widespread disagreement among parties over the terms of the instruments, complicating the resolution of various issues."

<sup>12</sup> Unlike the processing of registrations which has been delegated to the NFA and for which the Commission has no existing systems capability, the Commission has an extensive reporting system on which to build this reporting requirement. Accordingly, it would not be an undue or an unreasonable administrative burden for the Commission to undertake direct administration of the reporting requirement. Moreover, the Commission and not the NFA would be the primary user of the information reported. For these reasons,

report can be generated as one more step in the year-end closing of an ATOM's routine business accounts.

This yearly report obviously will provide the Commission with less information. However, it will provide an overall picture of the industry over time. Moreover, the Commission is retaining authority to obtain information as needed for regulatory purposes through inspections of the books and records of a particular firm, as needed. In addition, the Commission will likely conduct a market-wide survey, by special call, in order to evaluate the success of the rules. The information that would be required in a special call is specified in the rules.<sup>13</sup>

#### *D. Required Contract Terms and Limitations on Certain Strategies*

As noted above, one cause of a number of disputes involving hedge-to-arrive contracts was inadequate or vague contract specifications. To avoid a similar problem with agricultural trade options, Commission Rule 32.13(a)(6) requires that an agricultural trade option specify a number of contract terms, including the procedure for exercise, the expiration date and latest time on that date for exercise; the strike price; the total quantity of the commodity underlying the option; the quality or grade of commodity to be delivered if the option is exercised and any adjustments to price for deviations from stated quality or grade, or the range of, and a statement of the method for calculating such adjustments; the delivery location; the elements comprising the purchase price to be charged, including the premium, mark-ups on the premium, costs, fees and other charges; and additional costs, if any, which may be incurred if the commodity option is exercised. Commission Rule 32.13(a)(6)(i)-(vii). These terms would be expected to be found in any fully-specified physical delivery option contract.

However, representatives of some agricultural first handlers have objected to these requirements, arguing that they are overly restrictive, reducing an ATOM's ability to engineer instruments

the Commission is proposing to revise the requirement to provide that ATOMs file their annual reports directly with the Commission.

<sup>13</sup> The Commission is also proposing to revise the requirement that, except for funds used to purchase exchange-traded contracts as cover, ATOMs keep in segregation 100% of customer funds paid up front. In its rules governing the off or sale of dealer options, another type of over-the-counter option, the Commission required the option grantor to hold not less than 90% of funds paid by a customer in segregation (17 CFR 32.6(a)). The Commission is proposing to apply that practice to agricultural trade options, as well. This will provide ATOMs greater flexibility in structuring their business.

that offer greater flexibility to producers. One example given is the requirement that the option specify a delivery location and adjustments from par value. Although it is not clear to what degree these requirements actually would restrict an ATOM's design creativity, the current rules would have to be amended substantially to make conforming changes providing for cash settled options. Accordingly, and in light of the fact that even in the absence of the current rule options would ordinarily include the above terms, the Commission is proposing to delete this rule as a separate design requirement on ATOMs. Instead, the Commission is proposing to include in the Disclosure Document a statement that option customers should be sure that the contract includes, and that the customer understands the operation of, all of the above contract provisions.

Another common source of dispute involving hedge-to-arrive contracts involved situations where customers were the grantors or writers of call options. In return for the premium income paid to enhance their current grain prices, customers granted elevators the right to demand delivery in the future of grain that the producer did not yet own. Many producers entering into these transactions appear not to have fully understood the transaction's risk. Accordingly, the interim rules permit call writing by producers only to the extent the written call is paired with a purchased or long put option in a window or fence strategy. Some observers have suggested that producers, if they desire, should be able to grant or write call options if the position is covered by expected production. However, this position is not riskless. For example, if the producer suffers a production shortfall or loss, the producer's liability could be significant. For this reason, many of the producer representatives opposed changing the interim rules in this respect. The Commission, therefore, is not now proposing to change the prohibition against writing covered calls. In taking this position, the Commission is not ruling out its reconsideration after producers have had an opportunity to gain experience generally with the offer and sale of trade options.

#### *E. Exemption Level for Sophisticated Entities*

The interim rules exempt transactions in which each party to the option contract has a net worth of not less than \$10 million from compliance with all of the specific conditions for trading agricultural trade options. Commission

Rule 32.13(g). The Commission determined that the exemption should apply only to those entities with a very high net worth and that a greater level of regulatory protection was appropriate for transactions involving less well-financed entities. In particular, the Commission was of the view that "only the larger and better financed entities will consistently have available the legal and financial resources needed to protect their interests in an unregulated environment." 62 FR 59634.

While some in the agricultural community support lowering the exemption level, others oppose a lower exemption or even any exemption at all. NGFA, in particular, has argued that a lower exemption level "... would permit greater creativity to the market to more thoroughly assess what forms of agricultural trade options are most likely to be useful and successful for both buyers and sellers" and "... would permit wholesale, or secondary markets for certain forms of agricultural trade options to develop." See letter of June 15, 1999. Those opposing a lower exemption level fear that a lower exemption level "will create a competitive inequity across the merchandizing sector." These organizations instead favor increasing participation in regulated transactions by making them more user-friendly through the across-the-board revisions that the Commission is proposing. In light of the lack of consensus to lower the exemption level and the very broad changes to the rules being proposed, the Commission is not proposing to reduce the current exemption level.

### III. Other Matters

#### A. Paperwork Reduction Act (PRA)

When publishing proposed rules, the PRA of 1995 (Pub. L. 104-13 (May 13, 1996)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the Act, the Commission, through this rule proposal, solicits comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used. (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used. (3) Enhance the quality, utility, and clarity of the information to be collected. (4) Minimize the burden of the collection of

the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses. The Commission has previously received approval from OMB for the collection of information related to off-exchange agricultural trade options, which OMB designated as information collection 2028-0048. The approved burden associated with 3038-0048 is as follows:

*Average burden hours per response:* 5.420.

*Number of respondents per year:* 3,610.

*Frequency of response:* Quarterly and on occasion.

The Commission has submitted the proposed agricultural trade options rules and amendments of OMB for approval. The proposed rules would change the burden as follows:

*Average burden hours per response:* 5.59.

*Number of respondents per year:* 3,605.

*Frequency of response:* Annually and on occasion.

Persons wishing to comment on the information that would be required by this proposed/amended rule should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418-5160.

#### B. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601 et seq., requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has not previously determined whether all or some agricultural trade option merchants should be considered "small entities" for purposes of the RFA and, if so, to analyze the economic impact on such entities. However, the Commission is proposing that one of the conditions for registration as an agricultural trade option merchant is maintenance of a minimum level of net worth. The Commission previously found that other entities which were required to maintain minimum levels of net capital were not small entities for purposes of the RFA. See, 47 FR 18618, 18619 (April 30, 1982).

The Commission has also found, however, that one category of Commission registrant—introducing brokers (IBs)—which is required to maintain a minimum level of net

capital, may include small entities for purposes of the RFA. Nevertheless, in addition to the \$50,000 minimum net worth required for registration as an agricultural trade option merchant, such registrants must be in business in the underlying cash commodity. This will require that they have additional resources invested in order to qualify as an agricultural trade option merchant, in contrast to an IB whose additional investment beyond the minimum net capital may be relatively small. For this reason, the Commission believes that agricultural trade option merchants are more appropriately treated as not being small entities under the RFA.

The Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the proposed rules will revise rules removing a complete ban on the offer or sale of trade options on the agricultural commodities enumerated under the Act. The proposed rules permitting such transactions subject to the specified conditions therefore remove a burden for all entities, regardless of size.

### List of Subjects

#### 17 CFR Part 3

Administrative practice and procedure, Brokers, Commodity futures.

#### 17 CFR Part 32

Commodity futures, Commodity options, Prohibited transactions, Trade options.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and in particular sections 2(a)(1)(A), 4c, and 8a, 7 U.S.C. 2, 6c, and 12A, as amended, the Commission hereby proposes to amend parts 3 and 32 of chapter I of title 17 of the Code of Federal Regulations as follows:

### PART 3—REGISTRATION

1. The authority citation for part 3 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 4, 4a, 6, 6b, 6c, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23; 5 U.S.C. 552, 552b.

2. Section 3.13 is proposed to be revised to read as follows:

#### § 3.13 Registration of agricultural trade option merchants and their associated persons.

(a) *Definitions.* (1) *Agricultural trade option merchant.* "Agricultural trade option merchant" means any person that is in the business of soliciting,

offering to enter into, entering into, confirming the execution of, or maintaining a position in, transactions or agreements in interstate commerce which are not conducted or executed on or subject to the rules of a contract market, and which are or are held out to be of the character of, or are commonly known to the trade as, an "option," "privilege," "indemnity," "bid," "offer," "put," "call," "advance guarantee," or "decline guarantee," involving wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, 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. Provided, however, that any person entering into such transactions solely for the purpose of managing the risk arising from the conduct of his or her own commercial enterprise is not considered to be in the business described in this paragraph.

(2) *Associated person of an agricultural trade option merchant.* "Associated person of an agricultural trade option merchant" means a partner, employee, or agent (or any person occupying a similar status or performing similar functions) that:

(i) Solicits or accepts customers' orders (other than in a clerical capacity) or

(ii) Supervises any person or persons so engaged.

(b) *Registration required.* It shall be unlawful for any person in the business of soliciting, offering or selling the instruments listed in § 32.2 of this chapter to solicit, to offer to enter into, or to enter into, to confirm the execution of, or to maintain transactions in such instruments or to supervise persons so engaged except if registered as an agricultural trade option merchant or as an associated person of such a registered agricultural trade option merchant under this section.

(c) *Duration of registration.* (1) A person registered in accordance with the provisions of this section shall continue to be registered until the revocation or withdrawal of registration.

(2) Agricultural trade option merchants must notify the National Futures Association within twenty days when an associated person has ceased to be so associated.

(3) An associated person who ceases to be associated with a registered agricultural trade option merchant is prohibited from engaging in activities requiring registration under § 32.13 of

this chapter or representing himself or herself to be a registrant until:

(i) A registered agricultural trade option merchant notifies the National Futures Association of the person's association; and

(ii) The associated person certifies to the National Futures Association that he or she is not disqualified from registration for the reasons listed in section 8a (2) and (3) of the Act; *Provided, however,* no such certification is required when the associated person becomes associated with the new agricultural trade option merchant within ninety days from when the associated person ceased the previous association.

(d) *Conditions for registration.* (1) Applicants for registration as an agricultural trade option merchant must meet the following conditions:

(i) The agricultural trade option merchant must have and maintain at all times net worth of at least \$50,000 computed in accordance with generally accepted accounting principles;

(ii) The agricultural trade option merchant must identify each of the natural persons who controls or directs the offer or sale of trade options or associated trading activity by the agricultural trade option merchant or who supervises any associated person of the agricultural trade option merchant and each such natural person must certify that he or she is not disqualified from registration for the reasons listed in sections 8a(2) and (3) of the Act; and

(iii) The agricultural trade option merchant must provide access to any representative of the Commission of the U.S. Department of Justice for the purpose of inspecting books and records.

(2) Applicants for registration as an associated person of an agricultural trade option merchant must meet the following conditions. Such persons must:

(i) Identify the agricultural trade option merchant with whom the person is associated or to be associated within thirty days of the person's registration; and

(ii) Certify that he or she is not disqualified from registration for the reasons listed in sections 8a(2) and (3) of the Act.

(e) *Applications for registration.* (1) The agricultural trade option merchant, including its principals, and associated persons of an agricultural trade option merchant must apply for registration on the appropriate forms specified by the National Futures Association and approved by the Commission, in accordance with the instructions thereto, including the separate

certifications from each natural person that he or she is not disqualified for any of the reasons listed in sections 8a(2) and (3) of the Act and such other identifying background information as may be specified.

(2) The agricultural trade option merchant's application must also include its most recent annual financial statements certified by an independent certified public accountant in accordance with generally accepted auditing standards prepared within the prior 12 months.

(3) These applications must be supplemented to include any changes in the information required to be provided thereon on a form specified by the National Futures Association and approved by the Commission.

(f) *Withdrawal of application for registration; denial, suspension and revocation of registration.* The provisions of §§ 3.51, 3.55, 3.56 and 3.60 shall apply to applicants for registration and registrants as agricultural trade options merchants and their associated persons under this part 3 as though they were an applicant or registrant in any capacity under the Act.

(g) *Withdrawal from registration.* An agricultural trade option merchant that has ceased or has not commenced engaging in activities requiring registration may withdraw from registration 30 days after notifying the National Futures Association on the specified form of its intent to do so, unless otherwise notified by the Commission. Such a withdrawal notification must include information identifying the location of, and the custodian authorized to release, the agricultural trade option merchant's records, a statement of the disposition of customer positions, cash balances, securities or other property and a statement that no obligations to customers arising from agricultural trade options remain outstanding.

(h) *Dual registration of associated persons.* An associated person of an agricultural trade option merchant may be associated with other registrants subject to the provision of § 3.12(f).

3. Section 3.14 is proposed to be removed and reserved.

## PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS

4. The authority citation for part 32 continues to read as follows:

**Authority:** 7 U.S.C. 2, 6c and 12a.

5. Section 32.2 is republished for the convenience of the reader:



**§ 32.2 Prohibited transactions.**

Notwithstanding the provisions of § 32.11, no person may offer to enter into, confirm the execution of, or maintain a position in, any transaction in interstate commerce involving wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, 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 if the transaction 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 guarantee," or "decline guarantee," except as provided under § 32.13 of this part.

6. Section 32.13 is proposed to be revised to read as follows:

**§ 32.13 Exemption from prohibition of commodity option transactions for trade options on certain agricultural commodities.**

(a) The provisions of § 32.11 shall not apply to the solicitation or acceptance of orders for, or the acceptance of money, securities or property in connection with, the purchase or sale of any commodity option of a physical commodity listed in § 32.2 by a person who is a producer, processor, or commercial user of, or a merchant handling or selling inputs used in the production of, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, or a bank routinely engaged in the financing of such businesses, if all of the following conditions are met at the time of the solicitation or acceptance:

(1) That person is registered with the Commission as an agricultural trade option merchant and that person's associated persons and their supervisors are registered as associated persons of an agricultural trade option merchant under § 3.13 of this chapter.

(2) The option offered by the agricultural trade option merchant is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, and such producer, processor, commercial user, or merchant is offered of enters into the commodity option transaction solely for purposes related to its business as such.

(3) [Reserved]

(4) To the extent that payment by the customer of the purchase price is made to the agricultural trade option merchant prior to option expiration or exercise, that amount:

(i) May only be used by the agricultural trade option merchant to purchase a covering position on a contract market designated under section 6 of the Act or part 33 of this chapter; and

(ii) Any amount not so used shall be treated as belonging to the customer until option expiration or exercise as provided under and in accordance with § 32.6 of this part.

(5) Producers may not:

(i) Grant or sell a put option; or

(ii) Grant or sell a call option, except to the extent that such a call option is purchased or combined with a purchased or long put option position, and only to the extent that the customer's call option position does not exceed the customer's put option position in the amount to be delivered. Provided, however, that the option must be entered into simultaneously and expire simultaneously or at any time that one or the other option is exercised.

(6) All option contracts, including all terms and conditions, offered or sold pursuant to this section shall be in writing, a signed copy of which shall be provided to the customer, of if the contract is verbal, it shall be confirmed in a writing which includes all terms and conditions, signed by the agricultural trade option merchant, and provided to the customer within 48 hours.

(7) Prior to the entry by a customer into the first option transaction with an agricultural trade option merchant, the agricultural trade option merchant shall furnish, through written or electronic media, a summary disclosure statement to the option customer. The summary disclosure statement shall include:

(i) The following statements in boldface type on the first page(s) of the summary disclosure statement:

This brief statement does not disclose all of the risks and other significant aspects of trading in commodity trade options. You are encouraged to seek out as much information as possible from sources other than the person selling you this option about the use and risks of option contracts before entering into this contract. The issuer of your option should be willing and able to answer clearly any of your questions.

**Appropriateness of Option Contracts**

Option contracts may result in the total loss of any funds you pay to the issuer of your option. You should carefully consider whether trading in such instruments is appropriate for you in light of your experience, objectives, financial resources

and other relevant circumstances. The issuer of your option contract should be willing and able to explain the financial outcome of your option contract under different market conditions. You should also be aware that this option is not issued by, guaranteed by, or traded on or subject to the rules of a futures exchange. You may be able to obtain a similar contract or execute a similar risk management strategy using an instrument traded on a futures exchange which offers greater regulatory and financial protections.

**Costs and Fees Associated With an Option Contract**

Before entering into an option contract, you should understand all of the costs associated with it. These include the option premium, commissions, fees, costs associated with delivery if the option requires settlement by delivery upon its exercise and any other charges which may be incurred. All of these costs and fees must be specified in the terms of your option contract.

**Know and Understand the Terms of the Option Contract**

Before entering into an option contract, you should know and understand all of the option contract's terms. All of the option contract's terms should be included in the written contract, or for a verbal agreement, in a written confirmation. You should receive a signed copy of either the written contract or of the written confirmation. Your option contract should include contract terms setting:

(A) The total quantity of commodity underlying the option contract;

(B) The strike price(s) of the option contract;

(C) The procedure for exercise of the option contract, including when you can exercise and the latest time and date for exercise;

(D) Whether the option can be off-set or canceled prior to expiration;

(E) Whether settlement of the option is for cash or by delivery of the commodity;

(F) If settlement is by delivery, the delivery location or locations, the quality or grade of commodity to be delivered and how adjustments to price for deviations from stated quality or grade are determined;

(G) If settlement is by cash, the method for determining the cash-settlement price; and

(H) The cost and method of payment.

**Business Use of Trade Options**

In order to comply with the law, you must be buying this option for business-related purposes. The terms and structure of the contracts must therefore relate to your activity or commitments in the underlying cash market. Any amendments allowed to the option contract or its cancellation or off-set prior to its expiration date must reflect changes in your activity, in your commitments in the underlying cash market or in the carrying of inventory. Producers are not permitted to enter into short call options unless the producer also enters into a long put option contract for the same amount or more of the commodity, at the same time and with the same expiration date. Producers are not permitted to sell put options, whether alone or in combination with a call option.



### Dispute Resolution

If a dispute should arise under the terms of this trade option contract, you have the right to choose to use the reparations program run by the Commodity Futures Trading Commission or any other dispute resolution forum provided to you under the terms of your customer agreement or by law. For more information on the Commission's Reparations Program contact: Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418-5250.

### Acknowledgment of Receipt

The Commodity Futures Trading Commission requires that all customers receive and acknowledge receipt of this disclosure statement. The Commodity Futures Trading Commission does not intend this statement as a recommendation or endorsement of agricultural trade options. These commodity options have not been approved or disapproved by the Commodity Futures Trading Commission, nor has the Commission passed upon the accuracy or adequacy of this disclosure statement. Any representation to the contrary is a violation of the Commodity Exchange Act and Federal regulations.

(ii) The following acknowledgment section:

I hereby acknowledge that I have received and understood this summary risk disclosure statement.

Date.

Signature of Customer.

(8) An agricultural trade option merchant may not require a customer to waive the right to seek reparations under section 14 of the Act and part 12 of this chapter by an agreement or understanding to submit a claim or grievance to a specified settlement procedure prior to the time a claim or grievance arises. An agricultural trade option merchant, when notifying a customer of its intent to submit a claim or grievance to arbitration under a pre-existing agreement, must advise the customer in writing that the customer within forty-five days may elect to seek reparations under Section 14 of the Act and part 12 of this chapter.

(b) *Report of account information.* Registered agricultural trade option merchants must provide customers with open positions the following information:

(1) Within two business days of the off-set, cancellation or settlement of the option for cash, or of the amendment of the expiration of the option, a statement of profit or loss on the transaction and on the account;

(2) In response to a customer's request, current commodity price quotes, all other information relevant to

the customer's position or account, and the amount of any funds owed by, or to, the customer within one business day if responding orally and within two business days if responding in writing;

(3) Written, verbal or electronic notice of the expiration date of each option which will expire within the subsequent calendar month.

(c) *Recordkeeping.* Registered agricultural trade option merchants shall keep full, complete and systematic books and records together with all pertinent data and memoranda of or relating to such transactions, including customer solicitations and covering transactions, maintain such books and records as specified in § 1.31 of this chapter, and make such reports to the Commission as provided for in paragraphs (c) and (d) of this section and as the Commission may otherwise require by rule, regulation, or order. Such books and records shall be open at all times to inspection by any representative of the Commission and the United States Department of Justice.

(d) *Reports.* Registered agricultural trade option merchants must file annual reports with the Commission at its Washington, DC, headquarters within ninety days after the close of the agricultural trade option merchant's fiscal year, in the form and manner specified by the Commission, which shall contain the following information:

(1) By commodity and put, call or combined option:

(i) Total number of new contracts entered into during the reporting period;

(ii) Total quantity of commodity underlying new contracts entered into during the reporting period;

(iii) Total number of contracts outstanding at the end of the reporting period;

(iv) Total quantity of underlying commodity outstanding under option contracts at the end of the reporting period;

(v) Total number of options exercised during the reporting period; and

(vi) Total quantity of commodity underlying the options exercised during the reporting period.

(2) Total number of customers by commodity with open option contracts at the end of the reporting period.

(e) *Special calls.* Upon special call by the Commission for information relating to agricultural trade options offered or sold on the dates specified in the call, each agricultural trade option merchant shall furnish to the Commission within the time specified the following information as specified in the call:

(1) All positions and transactions in agricultural trade options, including information on the identity of

agricultural trade option customers and on the value of premiums, fees, commissions, or charges other than option premiums, collected on such transactions.

(2) All related positions and transactions for future delivery or options on contracts for future delivery or on physicals on all contract markets.

(3) All related positions and transactions in cash commodities, their products, and by-products.

(f) *Internal controls.* (1) Each agricultural trade option merchant registered with the Commission shall prepare, maintain and preserve information relating to its written policies, procedures, or systems concerning the agricultural trade option merchant's internal controls with respect to market risk, credit risk, and other risks created by the agricultural trade option merchant's activities, including systems and policies for supervising, monitoring, reporting and reviewing trading activities in agricultural trade options; policies for hedging or managing risk created by trading activities in agricultural trade options, including a description of the types of reviews conducted to monitor positions; and policies relating to restrictions or limitations on trading activities.

(2) The financial statements of the agricultural trade option merchant must on an annual basis be audited by a certified public accountant in accordance with generally accepted auditing standards.

(3) The agricultural trade option merchant must file with the Commission a copy of its certified financial statements within 90 days after the close of the agricultural trade option merchant's fiscal year.

(4) The agricultural trade option merchant must perform a reconciliation of its books at least monthly.

(5) The agricultural trade option merchant:

(i) Most report immediately if its net worth falls below the level prescribed in § 3.13(d)(1)(i) of this chapter, and must report within three days discovery of a material inadequacy in its financial statements by an independent public accountant or any state or federal agency performing an audit of its financial statements, to the Commission by facsimile, telegraphic or other similar electronic notice; and

(ii) Within five business days after giving such notice, the agricultural trade option merchant must file a written report with the Commission stating what steps have been taken or are being taken to correct the material inadequacy.

(6) If the agricultural trade option merchant's net worth falls below the level prescribed in § 3.13(d)(1)(i) of this chapter, it must immediately cease offering or entering into new option transactions and must notify customers having premiums which the agricultural trade option merchant is holding under paragraph (a)(4) of this section that such customers can obtain an immediate refund of that premium amount, thereby closing the option position.

(g) *Exemption.* (1) The provisions of §§ 3.13, 32.2, 32.11 and this section shall not apply to a commodity option offered by a person which has a reasonable basis to believe that:

(i) The option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof;

(ii) Such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such; and

(iii) Each party to the option contract has a net worth of not less than \$10 million or the party's obligations on the option are guaranteed by a person which has a net worth of \$10 million and has a majority ownership interest in, is owned by, or is under common ownership with, the party to the option.

(2) Provided, however, that § 32.9 continues to apply to such option transactions.

Issued this 25th day of August, 1999, in Washington, DC, by the Commodity Futures Trading Commission.

**Catherine D. Dixon,**

*Assistant Secretary of the Commission.*

[FR Doc. 99-22555 Filed 8-30-99; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Part 1926

[Docket No. S-206C]

RIN 1218-AB62

#### Safety Standards for Fall Protection in the Construction Industry; Correction

**AGENCY:** Occupational Safety and Health Administration, U.S. Department of Labor.

**ACTION:** Advance notice of proposed rulemaking; correction.

**SUMMARY:** On July 14, 1999, OSHA published an Advanced Notice of

Proposed Rulemaking (ANPR) titled, "Safety Standards for Fall Protection in the Construction Industry." The ANPR was published with an incorrect Regulation Identifier Number (RIN). This document corrects that error.

**FOR FURTHER INFORMATION CONTACT:** Ms. Bonnie Friedman, Occupational Safety and Health Administration, Office of Public Affairs, Room N3647, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, Telephone: (202) 693-1999. Anyone with questions regarding this correction or the July 14 ANPR, should contact Ms. Jule Jones at (202) 693-2345.

**SUPPLEMENTARY INFORMATION:** On July 14, 1999, at 64 FR 38078, OSHA published an Advanced Notice of Proposed Rulemaking (ANPR) titled "Safety Standards for Fall Protection in the Construction Industry." In that document, OSHA requested comments and information on fall protection for workers engaged in certain construction activities currently covered by OSHA's standards. The ANPR was published with an incorrect RIN. The correct RIN, as printed in the Semiannual Regulatory Agenda, is 1218-AB62.

**Authority:** This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 23rd day of August, 1999.

**Charles N. Jeffress,**

*Assistant Secretary.*

[FR Doc. 99-22422 Filed 8-30-99; 8:45 am]

BILLING CODE 4510-26-M

## DEPARTMENT OF TRANSPORTATION

### 33 CFR Part 100

[CGD07-99-057]

RIN 2115-AE46

#### Special Local Regulations: Puerto Rico International Cup, Fajardo, Puerto Rico

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Temporary special local regulations are being proposed for the Puerto Rico International Cup, in Fajardo, Puerto Rico. The event will be held from 1 p.m. to 2:30 p.m. Atlantic Standard Time (AST) on December 5, 1999 in Fajardo, Puerto Rico. These regulations are needed to provide for the safety of life on navigable waters during the event.

**DATES:** Comments must be received on or before November 1, 1999.

**ADDRESSES:** Comments may be mailed to Commander, U.S. Coast Guard Greater Antilles Section (aton), P.O. Box S-3666, San Juan, Puerto Rico 00902, or may be delivered to the Aids to Navigation Office at the Coast Guard Base in Old San Juan between 7:30 a.m. and 3:30 p.m. Monday through Friday, except federal holidays. The telephone number is (787) 729-5381.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Reyes at (787) 729-5381.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD07-99-057) and the specific section of this proposal to which each comment applies, and give a reason for each comment.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in the view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at the time and place announced by a notice in the **Federal Register**.

##### Background and Purpose

These proposed regulations would create a regulated area offshore Fajardo, that would prohibit entry to non-participating vessels during the race. The participating race boats will be competing at high speeds with numerous spectator craft in the area, thus creating an extra or unusual hazard on the navigable waterways. These regulations are required to provide for the safety of life on navigable waters during the Puerto Rico International Cup, Fajardo, Puerto Rico.

##### Regulatory Evaluation

This proposed regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(f) of that order. The Office of Management and Budget has excepted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The