§ 1112.11 What Must a Third Party Conformity Assessment Body Do After an Audit?

(a) When the accreditation body presents its findings to the third party conformity assessment body, the third party conformity assessment body's quality manager must receive the findings and, if necessary, initiate corrective action in response to the findings.

(b) The quality manager must prepare a resolution report identifying the corrective actions taken and any follow-up activities. If findings indicate that immediate corrective action is necessary, the quality manager must document that he/she notified the relevant parties within the third party conformity assessment body to take immediate corrective action and also document the action(s) taken.

(c) If the accreditation body decides to reduce, suspend, or withdraw the third party conformity assessment body's accreditation, and the reduction, suspension, or withdrawal of accreditation is relevant to the third party conformity assessment body's activities pertaining to a CPSC regulation or test method, the quality manager must notify the CPSC. Such notification must be sent to the Assistant Executive Director, Office of Hazard Identification and Reduction, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814, within five business days of the accreditation body's notification to the third party conformity assessment body.

(d) If the CPSC finds that the third party conformity assessment body no longer meets the conditions specified in CPSC Form 223 or in the relevant statutory provisions applicable to that third party conformity assessment body, the CPSC will notify the third party conformity assessment body, identify the condition or statutory provision that is no longer met, and specify a time by which the third party conformity assessment body shall notify the CPSC of the steps it intends to take to correct the deficiency and when it will complete such steps. The quality manager must document that he/she notified the relevant parties within the third party conformity assessment body to take corrective action and also document the action(s) taken.

(e) If the third party conformity assessment body fails to remedy the deficiency in a timely fashion, the CPSC shall take whatever action it deems appropriate under the circumstances, up to and including withdrawing the CPSC's accreditation of the third party conformity assessment body or the CPSC's acceptance of the third party conformity assessment body's accreditation.

§ 1112.13 What Records Should a Third Party Conformity Assessment Body Retain Regarding an Audit?

A third party conformity assessment body must retain all records relating to an audit and all records pertaining to the third party conformity assessment body's resolution of or plans for resolving nonconformities identified through a reassessment by an accreditation body or through an examination by the CPSC. A third party conformity assessment body also must retain such records relating to the last three reassessments (or however many reassessments have been conducted if the third party conformity assessment body has been reassessed less than three times) and make such records available to the CPSC upon request.

Dated: August 7, 2009.

Todd A. Stevenson,

Secretary.

[FR Doc. E9–19443 Filed 8–12–09; 8:45 am]

BILLING CODE 6355–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 190

RIN 3038–AC82

Account Class

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (the ''Commission'') proposes amending its regulations (the ''Regulations'') to create a sixth and separate ''account class,'' applicable only to the bankruptcy of a commodity broker that is a futures commission merchant (''FCM''), for positions in cleared over-the-counter (''OTC'') derivatives (and money, securities, and/or other property margining, guaranteeing, and securing such positions). In general, the concept of ''account class'' governs the manner in which the trustee calculates the net equity (*i.e.*, claims against the estate) and the allowed net equity (*i.e., pro rata* share of the estate) for each customer of a commodity broker in bankruptcy. The Commission further proposes amending the Regulations to codify the appropriate allocation, in a bankruptcy of any commodity broker, of positions in commodity contracts of one account class (and the money, securities, and/or other property margining, guaranteeing, or securing such positions) that are commingled with positions in commodity contracts of the futures account class (and the money, securities, and/or other property margining, guaranteeing, or securing such positions), pursuant to an order issued by the Commission.

DATES: Submit comments on or before September 14, 2009.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Agency Web Site: http://www.cftc.gov*. Follow the instructions for submitting comments on the Web site.
- *E-mail: secretary@cftc.gov.* Include the RIN number in the subject line of the message.
- *Fax:* 202–418–5521.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.

FOR FURTHER INFORMATION CONTACT: Robert B. Wasserman, Associate Director, Division of Clearing and Intermediary Oversight, 202–418–5092, *rwasserman@cftc.gov*; or Nancy Schnabel, Attorney-Advisor, Division of Clearing and Intermediary Oversight, 202–418–5344, *nschnabel@cftc.gov*; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Net Equity

A. Authority of Commission To Define ''Net Equity'' and To Prescribe Procedures for Its Calculation

The Commission is empowered by Section 20 of the Commodity Exchange Act (the ''Act''),[1] (i) to define the ''net equity'' of a customer of a commodity broker[2] in bankruptcy, and (ii) to prescribe, by rule or regulation,[3] the procedures for calculating such ''net

[1] 7 U.S.C. 24.

[2] Section 101(6) of the Bankruptcy Code (11 U.S.C. 101(6)) defines ''commodity broker'' as a ''futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant, or commodity options dealer, as defined in section 761 of this title, with respect to which there is a customer, as defined in section 761 of this title.''

[3] The regulations of the Commission can be found at 17 CFR Chapter 1.

equity.'' Moreover, Section 761(17) of the Bankruptcy Code [4] subjects the definition of ''net equity'' in the case of a commodity broker to ''such rules and regulations as the Commission promulgates under the Act.'' [5] Section 20 of the Act states, in pertinent part, that:

> Notwithstanding title 11 of the United States Code, the Commission may provide, with respect to a commodity broker that is a debtor under chapter 7 of title 11 of the United States Code, by rule or regulation— * * * (5) how the net equity of a customer is to be determined.[6]

The Commission has exercised its power under Section 20 of the Act in promulgating Regulation 190.07(b), which defines ''net equity'' as:

> [T]he total claim of a customer against the estate of the debtor based on the commodity contracts held by the debtor for or on behalf of such customer less any indebtedness of the customer to the debtor.[7]

In addition, the Commission has exercised its power under Section 20 of the Act in promulgating the remainder of Regulation 190.07 (Calculation of Allowed Net Equity). According to the proposing release for Regulation Part 190 (the ''Proposing Release''),[8] the Commission intended Regulation 190.07 to constitute a ''step-by-step method for calculating the estate's liability to a customer (*i.e.*, the customer's net equity) and of the pro rata share of the assets available to pay that claim (*i.e.*, the customer's allowed net equity claim).'' [9] To further such intent, the Commission set forth the concept of ''account class'' in Regulation 190.07, and defined the term ''account class'' in Regulation 190.01(a).

B. Account Class

1. Definition

Regulation 190.01(a) currently defines ''account class'' as follows:

> Each of the following types of customer accounts which must be recognized as a separate class of account by the trustee: [i] futures accounts, [ii] foreign futures accounts, [iii] leverage accounts, [iv] commodity option accounts and [v] delivery accounts as defined in § 190.05(a)(2): *Provided, however*, That to the extent that the equity balance, as defined in § 190.07, of a customer in a commodity option, as defined in § 1.3(hh) of this chapter, may be commingled with the equity balance of such customer in any domestic commodity futures contract pursuant to regulations under the Act, the aggregate shall be treated for purposes of this part as being held in a futures account.[10]

2. Rationale for the Concept of Account Class

In general, the Regulations apply different requirements to the treatment of positions in different types of commodity contracts (and to the money, securities, and/or other property margining, guaranteeing, or securing such positions) based on the underlying characteristics of those contracts. For example, the segregation requirements in Regulations 1.20 through 1.30 [11] would generally apply to positions in commodity futures contracts that are traded on a designated contract market (*i.e.*, futures contracts), and to the money, securities, and/or other property margining, guaranteeing, or securing such positions. In contrast, the requirements in Regulation 30.7 [12] would generally apply to positions in commodity futures contracts that are traded on foreign boards of trade (*i.e.*, foreign futures or foreign options contracts), and to the money, securities, and/or other property margining, guaranteeing, or securing such positions.[13]

Under the Regulations, requirements for the treatment of positions (and the money, securities, and/or other property margining, guaranteeing, or securing such positions) may differ in stringency, and therefore in the degree of protection that they afford customers of a commodity broker in bankruptcy. For example, the segregation requirements in Regulations 1.20 through 1.30 are more stringent than the requirements in Regulation 30.7.[14] Thus, the Commission created the concept of ''account class,'' in order to ensure that, in a bankruptcy of a commodity broker, customers that hold positions in commodity contracts (and deposit money, securities, and/or other property to margin, guarantee, or secure such positions) subject to one requirement would benefit from the specific protections afforded by such requirement. As the Commission stated in the Proposing Release:

> The reason for identifying classes of customer accounts is to permit the implementation of the principle of pro rata distribution so that the differing segregation requirements with respect to different classes of accounts benefit customer claimants based on the class of account for which they were imposed.[15]

As the Commission further stated in the Proposing Release:

> Obviously, much of the benefit of segregation would be lost if property segregated on behalf of a particular account class could be allocated to pay the claims of customers of a different account class for which less stringent segregation requirements were in effect.[16]

The Commission codified the aforementioned intent by promulgating Regulation 190.08(c), which states:

> [P]roperty held by or for the account of a customer, which is segregated on behalf of a specific account class * * * must be allocated to the customer estate of the account class for which it is segregated. * * *[17]

C. The Use of Account Class in the Calculation of Net Equity and Allowed Net Equity

As mentioned above, the concept of ''account class'' governs the manner in which the trustee calculates the net equity and the ''allowed net equity'' for each customer of a commodity broker in bankruptcy.

In general, Regulation 190.07(b) requires a trustee to calculate net equity separately for each account class.[18] Specifically, Regulation 190.07(b)(2) directs the trustee to ''aggregate the credit and debit equity balances of all accounts of the same class held by a customer in the same capacity'' while calculating net equity.[19]

---

[4] Section 761(17) of the Bankruptcy Code (11 U.S.C. 761(17)) is one provision in Subchapter IV of Chapter 7 of the Bankruptcy Code (11 U.S.C. 761 *et seq.*), which governs commodity broker liquidations (''Subchapter IV'').

[5] 11 U.S.C. 761(17).

[6] 7 U.S.C. 24.

[7] 17 CFR 190.07(a).

[8] *See* Proposed Rulemaking: 17 CFR Part 190 (Bankruptcy), 46 FR 57535 (November 24, 1981).

[9] *Id.* at 57546.

[10] 17 CFR 190.01(a).

[11] 17 CFR 1.20–1.30.

[12] 17 CFR 30.7.

[13] As discussed in further detail below, the Commission has the power under Section 4d of the Act (7 U.S.C. 6d) to issue an order permitting positions in foreign futures contracts (and the money, securities, and/or property margining, guaranteeing, or securing such positions), to be commingled, in either an FCM or DCO account, with positions in futures contracts (and the money, securities, and/or other property margining, guaranteeing, or securing such positions).

[14] When the Commission promulgated Regulation Part 190 in 1983, the Regulations had no requirements for the treatment of money, securities, and/or other property that were used to margin, guarantee, or secure commodity futures contracts traded on foreign boards of trade. In 1987, however, the Commission promulgated Regulation 30.7, which applies different and less stringent requirements to such money, securities, and/or other property than the segregation requirements in Regulations 1.20 through 1.30.

[15] Proposing Release, *supra*, note 9 at 57536.

[16] *Id.* at 57554.

[17] 17 CFR 190.08(c).

[18] 17 CFR 190.07(b).

[19] 17 CFR 190.07(b)(2).

Regulation 190.07(b)(3) (17 CFR 190.07(b)(3)) provides a limited exception to Regulation 190.07(b)(2), by permitting the trustee, while calculating net equity, to offset ''[a] negative equity balance with respect to one customer account class'' against ''a positive equity balance in any other

Continued

Regulation 190.07(a) states that ''allowed net equity'' shall ''be equal to the aggregate of the funded balances of such customer's net equity claim for each account class plus or minus'' certain adjustments.[20] Regulation 190.07(c), in turn, defines ''funded balance'' as: ''* * * a customer's pro rata share of the customer estate with respect to each account class available as of the primary liquidation date for distribution to customers of the same class.'' [21]

As this definition provides, Regulation 190.07(c) requires a trustee to calculate funded balance separately for each account class. Specifically, Regulation 190.07(c)(1) requires the trustee to calculate, with respect to a particular account class held by a particular customer of a commodity broker in bankruptcy, the ratio between (i) the net equity of such customer for such account class, and (ii) the net equity of all customers for such account class. Regulation 190.07(c)(1) then requires the trustee to multiply such ratio against the value of any money, securities or other property that the commodity broker held on behalf of commodity contracts in such account class. Finally, to calculate allowed net equity, Regulation 190.07(a) requires the trustee to aggregate the funded balances across account classes, and to make certain adjustments, thus generating the total amount that each customer is entitled to recover from all money, securities, and/or other property held on behalf of such customer.

II. Proposed Amendments To Include Cleared OTC Derivatives as a Separate Account Class

A. Description

As mentioned above, Regulation 190.01(a) currently sets forth five separate account classes: (i) Futures accounts; (ii) foreign futures accounts; (iii) leverage accounts; (iv) commodity option accounts; and (v) delivery accounts. The Commission is proposing to amend Regulation 190.01(a) to designate ''cleared OTC derivatives'' as a sixth and separate account class with respect to the bankruptcy of a commodity broker that is an FCM. The Commission is also proposing to make certain conforming changes to Regulation 190.07(b)(2)(viii) and Form 4 (Proof of Claim) in Appendix A to Regulation Part 190 (Bankruptcy Forms).[22] As described below, the Commission does not intend for ''cleared OTC derivatives'' to constitute a sixth and separate account class with respect to a bankruptcy of a commodity broker that is not an FCM.

The Commission is also proposing to amend Regulation 190.01 to define ''cleared OTC derivatives.'' In its Interpretative Statement, dated September 26, 2008 (the ''Statement on Cleared OTC Derivatives''), the Commission defined ''cleared-only contracts'' as those contracts that ''although not executed or traded on a Designated Contract Market or a Derivatives Transaction Execution Facility, are subsequently submitted for clearing through a Futures Commission Merchant * * * to a Derivatives Clearing Organization.'' [23] In the definition of ''cleared OTC derivatives'' in the proposed amendment to Regulation 190.01, the Commission is proposing to incorporate the definition for ''cleared-only contracts'' from the Statement on Cleared OTC Derivatives. However, consistent with the intentions specified in the Proposing Release,[24] the Commission proposes to limit ''cleared OTC derivatives'' to only those positions in ''cleared-only contracts'' that (along with the money, securities, and/or other property margining, guaranteeing, or securing such positions) are required to have been (i) segregated in accordance with a rule, regulation, or order issued by the Commission, or (ii) held in a separate account for ''cleared-only contracts'' in accordance with the rules or bylaws of a DCO. The Commission does not intend to specify substantive requirements for the treatment of cleared OTC derivatives (and the money, securities, and/or other property margining, guaranteeing, or securing such derivatives). Rather, the Commission proposes to define ''cleared OTC derivatives'' in such a manner as to specify the sources from which such substantive requirements may originate. Moreover, by including contracts that ''*are required* to be segregated * * * or to be held in a separate account'' for ''cleared-only contracts,'' the Commission seeks to avoid the need to engage in fact-intensive post-bankruptcy inquiries regarding compliance with such requirements.

B. Rationale

As detailed further below, the Commission is proposing these amendments (i) to reflect the extension of Subchapter IV (and, in turn, Regulation Part 190) to cleared OTC derivatives under the Commodity Futures Modernization Act of 2000 (the ''CFMA''),[25] and (ii) to address a scenario that the Statement on Cleared OTC Derivatives did not reference. The Commission is proposing the amendments at this time because of increased interest among DCOs in clearing OTC derivatives, and the need to enhance certainty regarding the treatment of cleared OTC derivatives in the bankruptcy of a commodity broker that is an FCM.

1. To Reflect the Extension of Subchapter IV to Cleared OTC Derivatives

The Commission promulgated the current version of Regulation 190.01(a) in 1983. At that time, cleared OTC derivatives, if they existed, were not ''commodity contracts'' within the meaning of Section 761(4) of the Bankruptcy Code.[26] Therefore, neither Subchapter IV nor Regulation Part 190 applied to cleared OTC derivatives.

The CFMA, however, created the opportunity for OTC derivatives to be cleared.[27] In addition, the CFMA extended Subchapter IV (and, in turn, Regulation Part 190) to cleared OTC derivatives. As mentioned in the Statement on Cleared OTC Derivatives, Section 761(4)(A) of the Bankruptcy Code defines ''commodity contract,'' with respect to an FCM, as a ''contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade.'' [28] The CFMA amended the definition of ''contract market'' in Section 761(7) of the Bankruptcy Code to include reference to a ''registered entity.'' As mentioned in the Statement on Cleared OTC Derivatives, Section 761(8) of the Bankruptcy Code incorporates by reference the definition of ''registered entity'' in the Act.[29] Therefore, the CFMA first permitted cleared OTC derivatives, which are subject to the rules of a DCO, to become ''commodity contracts'' within the meaning of Section 761(4) of the Bankruptcy Code, specifically with respect to a commodity broker that is an FCM.

account class of such customer held in the same capacity.''

[20] 17 CFR 190.07(a).

[21] 17 CFR 190.07(c).

[22] 17 CFR pt. 190, app. A, form 4.

[23] 73 FR 65514 (November 4, 2008).

[24] *See supra* notes 16 and 17, and the corresponding quotations from the Proposing Release in the text of this preamble.

[25] Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

[26] 11 U.S.C. 761(4).

[27] *See* Sections 2(d) and 2(e) of the Act (7 U.S.C. §§ 2(d), (e)).

[28] *Id.*

[29] 11 U.S.C. 761(8). The term ''registered entity'' is defined in Section 1a(29) of the Act (7 U.S.C. § 1a(29)) to include ''(iii) a derivatives clearing organization registered under Section 5b * * *.''

As detailed in the Statement on Cleared OTC Derivatives, in a bankruptcy of a commodity broker that is an FCM, claims arising out of cleared OTC derivatives should be included in the determination of net equity (and therefore, by inference, in the determination of allowed net equity), for purposes of Subchapter IV and Regulation Part 190.[30] Consequently, the Commission is proposing amendments to provide a regulatory framework to accomplish this goal.

2. To Address a Scenario Not Referenced in the Statement on Cleared OTC Derivatives

In the Statement on Cleared OTC Derivatives, the Commission explained that, for purposes of Regulation Part 190:

> A claim arising out of a cleared-only contract, or the property margining such a contract, would be includable in the futures account class, where, pursuant to Commission Order, the contract or property is included in an account segregated in accordance with Section 4d of the Act.[31]

However, the Commission did not address the treatment, under Regulation Part 190, of positions in cleared OTC derivatives (and the money, securities, and/or other property margining, guaranteeing, or securing such positions), in a scenario where there is no applicable Section 4d Order (as such term is defined below). Therefore, as mentioned above, the Commission is proposing amendments to create, only with respect to the bankruptcy of a commodity broker that is an FCM, a sixth and separate account class, to which cleared OTC derivatives (as well as the money, securities, and/or other property margining, guaranteeing, or securing such derivatives) could be allocated. By creating such an account class, the Commission is effectively specifying the manner in which the trustee in the bankruptcy of a commodity broker that is an FCM must treat, in the absence of an applicable Section 4d Order, claims arising out of cleared OTC derivatives when determining net equity and allowed net equity.

III. Proposed Amendment To Clarify Appropriate Allocation of Collateral to Certain Account Classes

The Commission has the power under Section 4d of the Act [32] to issue an order (a ''Section 4d Order'') permitting positions in commodity contracts of one account class (and the money, securities, and/or other property margining, guaranteeing or securing such positions), to be commingled with (and, therefore, to be accorded the same protections in bankruptcy as) positions in commodity contracts of the futures account class (and the money, securities, and/or other property margining, guaranteeing or securing such positions), in either an FCM or DCO account. Specifically, Section 4d of the Act states that:

> In accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, * * * money, securities, and property of the customers of such futures commission merchant may be commingled and deposited * * * with any other money, securities, and property received by such futures commission merchant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customers of such futures commission merchant.

The Commission has issued two interpretations stating that, for purposes of Regulation Part 190, if positions in commodity contracts (and relevant money, securities, and/or other property) of one account class, are, pursuant to a Commission order, commingled with positions in commodity contracts (and relevant money, securities, and/or other property) of the futures account class, then, the former positions (and relevant money, securities, and/or other property) shall be treated as part of the futures account class. First, the Commission issued an Interpretative Statement on October 21, 2004 (the ''Statement on Commingling Foreign Futures Positions''), stating that ''collateral supporting foreign futures placed in domestic segregation pursuant to Commission Order should be treated as in a futures account, not a foreign futures account, for purposes of Part 190.'' [33] In the Statement on Commingling Foreign Futures Positions, the Commission indicated that it would accord similar treatment to positions in other commodity contracts (and the relevant money, securities, and/or other property) that are placed in domestic segregation. Specifically, the Commission stated that:

> In a situation whereby Commission order or direction, customers are required or allowed to contribute to a Commission Regulation 1.20 segregated account, those customers also should benefit from the distribution of that account proportionately to their contributions in the event of insolvency. Such claims should be treated as encompassed within the futures account class as opposed to the foreign futures account class or another account class.[34]

As mentioned above, the Commission subsequently issued the Statement on Cleared OTC Derivatives, which extends the conclusion in the Statement on Commingling Foreign Futures Positions to cover cleared OTC derivatives that have been placed in domestic segregation pursuant to Commission order. Specifically, the Commission stated that:

> [I]n October 2004, the Commission issued an interpretation regarding the appropriate account class for funds attributable to contracts traded on non-domestic boards of trade, and the assets margining such contracts, that are included in accounts segregated in accordance with Section 4d of the Act pursuant to Commission Order. In that context, the Commission concluded that the claim is properly against the Section 4d account class because customers whose assets are deposited in such an account pursuant to Commission Order should benefit from that pool of assets. The same rationale supports the Commission's conclusion that a claim arising out of a cleared-only contract, or the property margining such a contract, would be includable in the futures account class, where, pursuant to Commission Order, the contract or property is included in an account segregated in accordance with Section 4d of the Act.[35]

The Commission is proposing to codify explicitly, in Regulation 190.01(a), a generalized version of the Statement on Commingling Foreign Futures Positions and the Statement on Cleared OTC Derivatives. This version shall apply to positions in all commodity contracts (and money, securities, and/or other property margining, guaranteeing, or securing such positions). The Commission believes that these amendments would remove any concerns regarding whether the Statement on Commingling Foreign Futures Positions and the Statement on Cleared OTC Derivatives would be limited to the specific factual patterns addressed therein. To be clear, it is the belief of the Commission that the Statement on Commingling Foreign Futures Positions and the Statement on Cleared OTC Derivatives are nonetheless effective without such explicit codification.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') [36] requires Federal agencies, in promulgating regulations, to consider the impact of those regulations on small

[30] 73 FR 65514, 65515 (November 4, 2008).

[31] 73 FR 65514, 65516 (November 4, 2008).

[32] 7 U.S.C. 6d.

[33] 69 FR 69510, 69511 (November 30, 2004).

[34] *Id.*

[35] 73 FR 65514, 65516 (November 4, 2008).

[36] 5 U.S.C. 601 *et seq.*

businesses. The amendments proposed herein will affect only FCMs and DCOs. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[37] The Commission has previously determined that FCMs [38] and DCOs [39] are not small entities for the purpose of the RFA. Accordingly, pursuant to 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that the amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA'') [40] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. The amendments do not require the new collection of information on the part of any entities subject to such amendments. Accordingly, for purposes of the PRA, the Commission certifies that the amendments, if promulgated in final form, would not impose any new reporting or recordkeeping requirements.

C. Cost-Benefit Analysis

Section 15(a) of the Act requires that the Commission, before promulgating a regulation under the Act or issuing an order, consider the costs and benefits of its action. By its terms, Section 15(a) of the Act does not require the Commission to quantify the costs and benefits of a new regulation or determine whether the benefits of the regulation outweigh its costs. Rather, Section 15(a) of the Act simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of the following considerations: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the Commission could, in its discretion, give greater weight to any one of the five considerations and could determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission has evaluated the costs and benefits of the amendments, in light of the specific considerations identified in Section 15(a) of the Act, as follows:

1. Protection of Market Participants and the Public

The amendments would benefit FCMs and DCOs, as well as customers of the futures and options markets, by providing greater certainty (i) in a bankruptcy of a commodity broker that is an FCM, regarding the treatment of cleared OTC derivatives, and (ii) in a bankruptcy of any commodity broker, regarding the allocation of positions in commodity contracts (and relevant money, securities, and/or other property) of one account class that are commingled in an FCM or DCO account, pursuant to an order from the Commission, with positions in commodity contracts (and relevant money, securities, and/or other property) of the futures account class.

2. Efficiency and Competition

The amendments are not expected to have an effect on efficiency or competition.

3. Financial Integrity of Futures Markets and Price Discovery

The amendments would enhance the protection, in the bankruptcy of a commodity broker that is an FCM, of customers with positions in cleared OTC derivatives, by providing an account class in which to hold such positions (and relevant money, securities, and/or other property). The amendments would enhance certainty regarding the treatment, in a bankruptcy of any commodity broker, of customers with positions (and relevant money, securities, and/or other property) subject to a Section 4d Order, by removing concerns regarding whether the Statement on Commingling Foreign Futures Positions and the Statement on Cleared OTC Derivatives would be limited to the specific factual patterns addressed therein. Thus, the proposed regulations would contribute to the financial integrity of the futures and options markets as a whole.

4. Sound Risk Management Practices

The amendments would reinforce the sound risk management practices already required of FCMs and DCOs, by (i) providing an account class in which to hold positions in cleared OTC derivatives (and relevant money, securities, and/or other property), and (ii) providing certainty to FCMs and DCOs regarding the allocation between account classes, in a commodity broker bankruptcy, of customer positions (and relevant money, securities, and/or other property) subject to a Section 4d Order.

5. Other Public Considerations

Recent market events, including disruptions in global credit markets, render it prudent to enhance certainty regarding the treatment of customer positions (and relevant money, securities, and/or other property) in a commodity broker bankruptcy.

Accordingly, after considering the five factors enumerated in the Act, the Commission has determined to propose the regulations set forth below.

List of Subjects in 17 CFR Part 190

Bankruptcy, Brokers, Commodity Futures.

For the reasons stated in the preamble, the Commission proposes to amend 17 CFR part 190 as follows:

PART 190—BANKRUPTCY

1. The authority citation for part 190 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7a, 12, 19, and 24, and 11 U.S.C. 362, 546, 548, 556, and 761–766, unless otherwise noted.

2. In § 190.01, revise paragraph (a) and add paragraph (oo) to read as follows:

§ 190.01 Definitions.

* * * * *

(a) *Account class* means each of the following types of customer accounts which must be recognized as a separate class of account by the trustee: futures accounts, foreign futures accounts, leverage accounts, commodity option accounts, delivery accounts as defined in § 190.05(a)(2), and, only with respect to the bankruptcy of a commodity broker that is a futures commission merchant, cleared OTC derivatives accounts; *Provided, however*, That to the extent that the equity balance, as defined in § 190.07, of a customer in a commodity option, as defined in § 1.3(hh) of this chapter, may be commingled with the equity balance of such customer in any domestic commodity futures contract pursuant to regulations under the Act, the aggregate shall be treated for purposes of this part as being held in a futures account; *Provided, further*, that, if positions in commodity contracts of one account class (and the money, securities, and/or other property margining, guaranteeing, or securing such positions), are, pursuant to a Commission order,

[37] 47 FR 18618 (Apr. 30, 1982).

[38] *Id.* at 18619.

[39] 66 FR 45604, 45609 (Aug. 29, 2001).

[40] 44 U.S.C. 3501 *et seq.*

commingled with positions in commodity contracts of the futures account class (and the money, securities, and/or other property margining, guaranteeing, or securing such positions), then the former positions (and the relevant money, securities, and/or other property) shall be treated, for purposes of this part, as being held in an account of the futures account class.

* * * * *

(oo) *Cleared OTC derivatives* shall mean positions in commodity contracts that have not been entered into or traded on a contract market (as such term is defined in § 1.3(h) of this chapter) or on a derivatives transaction execution facility (within the meaning of Section 5a of the Act), but which nevertheless are submitted by a commodity broker that is a futures commission merchant (as such term is defined in § 1.3(p) of this chapter) for clearing by a clearing organization (as such term is defined in this section), along with the money, securities, and/or other property margining, guaranteeing, or securing such positions, which are required to be segregated, in accordance with a rule, regulation, or order issued by the Commission, or which are required to be held in a separate account for cleared OTC derivatives only, in accordance with the rules or bylaws of a clearing organization (as such term is defined in this section).

4. In § 190.07, revise paragraph (b)(2)(viii) to read as follows:

§ 190.07 Calculation of allowed net equity.

(b) * * *

(2) * * *

(viii) Subject to paragraph (b)(2)(ix) of this section, the futures accounts, leverage accounts, options accounts, foreign futures accounts, and cleared OTC derivatives accounts of the same person shall not be deemed to be held in separate capacities: *Provided, however*, That such accounts may be aggregated only in accordance with paragraph (b)(3) of this section.

* * * * *

5. Amend ''bankruptcy appendix form 4—proof of claim'' in Appendix A to Part 190 by revising paragraph a in section III to read as follows:

Appendix A to Part 190—Bankruptcy Forms

* * * * *

Bankruptcy Appendix Form 4—Proof of Claim

* * * * *

III. * * *

a. Whether the account is a futures, foreign futures, leverage, option (if an option account, specify whether exchange-traded or dealer), ''delivery'' account, or, only with respect to a bankruptcy of a commodity broker that is a futures commission merchant, a cleared OTC derivatives account. A ''delivery'' account is one which contains only documents of title, commodities, cash, or other property identified to the claimant and deposited for the purposes of making or taking delivery on a commodity underlying a commodity contract or for payment of the strike price upon exercise of an option.

* * * * *

Issued in Washington, DC, on July 31, 2009, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–18853 Filed 8–12–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

[SATS No. MT–029–FOR; Docket ID: OSM–2008–0022]

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: We are announcing the receipt of revisions pertaining to a previously proposed amendment to the Montana regulatory program (hereinafter, the ''Montana program'') under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act''). Montana proposes additions of rules and revisions to the Administrative Rules of Montana (ARM) concerning Normal Husbandry Practices. Montana intends to revise its program to improve operational efficiency.

This document gives the times and locations that the Montana program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., mountain daylight time September 14, 2009. If requested, we will hold a public hearing on the amendment on September 8, 2009. We will accept requests to speak until 4 p.m., mountain daylight time, on August 28, 2009.

ADDRESSES: You may submit comments, identified by ''MT–029–FOR'' or Docket ID number OSM–2008–0022, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. The proposed rule has been assigned Docket ID OSM–2008–0022. If you would like to submit comments via the Federal eRulemaking portal, go to *http://www.regulations.gov* and do the following. Click on the ''Advanced Docket Search'' button on the right side of the screen. Type in the Docket ID ''OSM–2008–0022'' and click on the ''Submit'' button at the bottom of the page. The next screen will display the Docket Search Results for the rule making. If you click on ''OSM–2008–0022'', you can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.

- *Mail, Hand Delivery/Courier:* Jeff Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Room 1018, Casper, WY 82601–1018, (307) 261–6550. Fax: (307) 261–6552.

Instructions: All submissions received must include the agency name and MT–029–FOR. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: Access to the docket to review copies of the Montana program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, may be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Office of Surface Mining Reclamation and Enforcement's (OSM's) Casper Field Office. In addition, you may review a copy of the amendment during regular business hours at the following locations:

Jeff Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Room 1018, Casper, WY 82601–1018, Telephone: (307) 261–6550, E-mail: *jfleischman@osmre.gov.*

Neil Harrington, Chief, Industrial and Energy Minerals Bureau, Montana Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620–0901, Telephone: (406) 444–2544, E-mail: *neharrington@mt.gov.*