notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on July 23, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–17620 Filed 7–31–08; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 40, 41, and 145

RIN 3038–AC44

Confidential Information and Commission Records and Information

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking, reproposal.

SUMMARY: On July 20, 2007, the Commission published in the **Federal Register** a notice of proposed rulemaking to amend the procedures under which designated contract markets (DCMs), derivatives clearing organizations (DCOs), and derivatives transaction execution facilities (DTEFs) (collectively, ''registered entities'') may request confidential treatment for products and rules submitted via certification procedures or for Commission review and approval under parts 40 and 41 of the Commission's regulations.[1] Under the proposed amendments to Commission regulation 40.8, registered entities filing product and rule submissions would follow a procedure separate from the customary Freedom of Information Act (FOIA) confidential treatment procedures specified in Commission regulation 145.9, 17 CFR 145.9. As proposed to be amended, regulation 40.8(c) provided that: registered entities submitting material under parts 40 and 41 would be required to file a detailed written justification simultaneously with the request for confidential treatment; registered entities submitting material under parts 40 and 41 would be required to segregate material for which confidential treatment is requested in an appendix to the submission; and Commission staff may make an initial determination to grant or deny confidential treatment to such material before receiving a request under the FOIA. Regulation 40.8(c) is being reproposed to clarify that an initial determination by staff to deny confidential treatment may be appealed to the Commission's Office of General Counsel and that such an appeal will stay release of the material. The Commission believes these amendments, by creating a separate confidential treatment review process for filings under parts 40 and 41, will enhance the Commission's ability to provide the public with immediate access to non-confidential information.

The Commission received comments from three registered entities in response to the proposed rulemaking.[2] Two commenters expressed concerns with the amendments themselves and questioned the adequacy of the Commission's explanation for proposing the changes. In response to those comments, the Commission has determined to re-propose the amendments to regulation 40.8 to: clarify the procedure for seeking review of an adverse determination; amend appendix D to part 40 by adding to the submission cover sheet a box to be checked if confidential treatment is requested for any part of the underlying submission, in order to assist staff in efficiently and accurately posting publicly available information on the Commission's Web site; and amend Commission regulation 145.9(b) to clarify that its procedures for requesting confidential treatment do not apply to submissions filed under parts 40 and 41. The Commission further intends in this reproposal to more fully address its reasons for the proposed amendments and to explain the distinction between the proposed procedure and the procedures specified in regulation 145.9.

DATES: Submit comments on or before September 2, 2008. Comments previously submitted need not be resubmitted.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Mail/Hand Deliver:* David Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *E-mail: secretary@cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Nathan, Senior Special Counsel, (202) 418–5133, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. *Electronic mail: snathan@cftc.gov.* This document is also available at *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview

Part 40 of the Commission's regulations sets forth the standards and procedures to be followed by registered entities [3] for listing products for trading by certification to the Commission; voluntary submission of new products for Commission review and approval; amendments to terms or conditions of enumerated agricultural contracts; voluntary submission of rules for Commission review and approval; and self-certification of rules by DCMs and DCOs. Part 41 of the regulations provides standards and procedures for filing required information with respect to security futures products. Although much of the information required by parts 40 and 41 is made public by statute, regulation or agency practice, the Commission has observed an increase over the past several years in the number of confidential treatment requests for filings submitted under these parts. Most, but not all of these requests for confidential treatment have been submitted to the Commission in connection with market maker and other incentive programs (collectively, incentive programs).[4]

B. Freedom of Information Act

Most requests for confidential treatment are made pursuant to the Freedom of Information Act, 5 U.S.C. 552 (FOIA), which provides generally that the public has a right of access to federal agency records except to the extent such records, or portions of them, are protected from disclosure by one or

[1] 72 FR 39764 (July 20, 2007).

[2] Letter dated August 20, 2007 from CME Group (CME); Letter dated August 20, 2007 from CBOE Futures Exchange (CFE); Letter dated August 23, 2007 from New York Mercantile Exchange, Inc. (NYMEX).

[3] A registered entity is defined in section 1a(29) of the Commodity Exchange Act (Act) as a DCM under section 5 of the Act (including section 5f), a DTEF registered under section 5a of the Act, and a DCO registered under section 5b of the Act. Section 5f of the Act, along with part 41 of the Commission's regulations, establishes requirements for national securities exchanges, national securities associations and alternative trading systems registered with the Securities and Exchange Commission to notice register with the Commission in order to list security futures products (*i.e.*, futures on a single equity security and futures on narrow-based security indexes).

[4] Incentive programs typically are created by a registered entity to increase volume of trading and liquidity for new product launches or in markets that for other reasons have low trading volume. In general, registered entities have requested confidential treatment for the name of the market maker(s), the compensation arrangements provided by the registered entity, trade priorities (*i.e.*, percentage of the order flow), and the bid/ask spread level.

more of nine exemptions.[5] A registered entity requesting confidential treatment under the FOIA typically asserts that the information submitted to the Commission should be protected from disclosure pursuant to FOIA exemption (b)(4), 5 U.S.C. 552(b)(4), because its release will cause commercial or competitive harm to the submitter.[6]

C. The Commission's Implementing Regulations

All agencies subject to the FOIA are required to establish rules, procedures and standards for implementing that statute.[7] The Commission's FOIA rules are codified in part 145 of its regulations. Commission regulation 145.9 sets forth the procedures for requesting confidential treatment under the FOIA for information furnished to the Commission and for challenging adverse determinations of such requests. Under these provisions, a submitter must make, at the time of submission, a written request for confidential treatment which specifies the basis on which it believes confidential treatment is warranted. Unless and until a FOIA request is made for the material, however, no determination is made with respect to any request for confidential treatment.[8] When a FOIA request is received, the submitter of the requested information is required to file a detailed written justification of the confidential treatment request.[9] If staff initially determines that the request should be denied, regulation 145.9 permits the submitter to file an appeal of that initial decision with the Commission's Office of General Counsel. Likewise, if staff initially determines to grant the request for confidential treatment, a subsequent FOIA requester may appeal that decision to the Office of General Counsel.

Commission regulation 145.9 also permits the Commission to specify ''alternative procedures'' for ''a particular study, report, investigation, or other matter.''[10] Consistent with that authority, the Commission is proposing to specify alternative procedures for processing requests for confidential treatment of filings submitted under parts 40 and 41 of the Commission's regulations.

II. The Proposed Amendments

A. Procedures for Requesting Confidential Treatment Under Parts 40 and 41

The Commission is proposing to add paragraph (c) to Commission regulation 40.8 to establish the exclusive procedure to be followed by registered entities when requesting confidential treatment for information required to be filed under parts 40 and 41.[11] The Commission is also proposing to add paragraph (d) to regulation 40.8 to make clear the circumstances under which requests for confidential treatment will not be considered. Under the new procedure, the request for confidential treatment and a detailed written justification must be filed simultaneously with the submission, in the form and manner prescribed by Commission regulation 145.9(e). Further, the material for which confidentiality is claimed must be separated from the remainder of the submission and filed as an appendix. Proposed regulation 40.8(c) would permit Commission staff immediately to make an initial determination to grant or deny confidential treatment rather than deferring consideration until a FOIA request is received for the information, and would allow the submitter to appeal an adverse decision to the Commission's Office of General Counsel in the manner prescribed by Commission regulation 145.9(g). Proposed regulation 40.8(c) would not preclude reconsideration of a confidential treatment decision made under this regulation if a request for the material is subsequently made under the FOIA. In such circumstances, the process would be governed by the part 145 regulations.

The FOIA addresses tensions between the public's interest in access to certain information and the government's (or in some circumstances, the submitter's) interest in nondisclosure of sensitive information. Accordingly, that statute generally is triggered by a request for information from a member of the public, and the Commission's FOIA regulation provides that submitters of information who have properly requested confidential treatment need not file a detailed written justification supporting that request unless they receive notice from the Commission that it has received a FOIA request for that information.[12] Those tensions are not present here. On the contrary, Congress included in the Act's core principles applicable to registered entities requirements that DCMs, DCOs and DTEFs make certain information available to the public,[13] and the Commission demonstrated its commitment to transparency by adopting a regulation describing the types of information it considered publicly available.[14] In the Commission's view, the FOIA does not protect public information, and the absence of a FOIA request should not be permitted to delay or hinder its release of such information to the public. Accordingly, under proposed regulation 40.8(c), Commission staff may immediately analyze the merits of a detailed written justification and balance the submitter's interest in confidentiality against the Commission's interest in fostering transparency. The Commission intends, and the re-proposed regulation clarifies, that the procedure described in proposed regulation 40.8(c)(1) would expedite the release of information to the public while continuing to afford a registered entity the opportunity to challenge the denial of a confidential treatment request. As re-proposed, regulation 40.8(c) makes plain that the registered entity may follow the procedures outlined in the Commission's general FOIA regulation to appeal a staff denial of confidential treatment to the Commission's Office of General Counsel.[15] The re-proposed regulation further clarifies that a grant of any part of a request for confidential treatment may be reconsidered if a FOIA request for the same material subsequently is received by the Commission.

When a registered entity requests confidential treatment for an entire submission filed under part 40 or 41, Commission staff frequently asks the entity to amend its original submission by segregating out the material for which it claims confidentiality so that remaining materials can be made public without delay.[16] Registered entities

[5] 5 U.S.C. 552(b)(1)–(9).

[6] Exemption (b)(4) of the FOIA protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential. *See also* Commission regulation 145.9(d)(ii).

[7] The FOIA requires that each agency promulgate regulations governing, *inter alia*, the methods whereby the public may obtain information, make submissions or obtain decisions as well as other substantive and procedural FOIA regulations. 5 U.S.C. 552(a).

[8] *See* 17 CFR 145.9(d)(10).

[9] The guidelines and standards for preparing and filing a detailed written justification are found in Commission regulation 145.9(e).

[10] Commission regulation 145.9(b).

[11] The proposal also would add new regulations 40.2(a)(3)(iv), 40.6(a)(3)(vi), 41.23(a)(7), and 41.24(a)(6), and amend regulations 40.3(a)(7) and 40.5(a)(8) to direct the registered entity requesting confidential treatment for submissions made under part 40 or 41 to follow the new procedures specified in Commission regulation 40.8(c).

[12] *See* Commission regulation 145.9(e)(1), 17 CFR 145.9(e)(1).

[13] See section 5(a)(7) (DCM Core Principle 7); section 5b(2)(L) (DCO Core Principle L); and section 5a(d)(5) (DTEF Core Principle 5).

[14] See regulation 40.8(a).

[15] See regulation 145.9(g), 17 CFR 145.9(g).

[16] The Commission's policy is to provide public availability of submission information by posting submissions filed under parts 40 and 41 on the Commission's Web site as efficiently and accurately as possible.

generally have been receptive to these informal staff requests. Proposed regulation 40.8(c)(2), which would require that material deemed confidential be segregated in an appendix to the submission, would codify this staff practice and enable the Commission to make plainly non-confidential material immediately available to the public while staff evaluates the registered entity's claims of confidentiality for the segregated material.

B. Public Availability of Terms and Conditions of Products and Mechanisms for Executing Transactions on or Through the Facilities of the Contract Market

As noted, substantial portions of the material filed pursuant to parts 40 and 41 are required by statute to be made publicly available by registered entities. Section 5(d)(7) of the Act—DCM Core Principle 7—requires that the terms and conditions of contracts and the mechanisms for executing transactions on or through a DCM be made available by the DCM to market authorities, market participants, and the public.[17] Similarly, DTEF Core Principle 5 requires that boards of trade publicly disclose specified information, and Core Principle L requires that DCOs make available to market participants information concerning the rules and operating systems of clearing and settlement systems. In 2004, the Commission added paragraph (a) to regulation 40.8 to specify the portions of DTEF, DCO and DCM applications which are publicly available.[18]

Furthermore, regulations 40.3(a)(7) and 40.5(a)(8) specify that a product's terms and conditions are publicly available at the time of their submission. Product terms and conditions made publicly available at the time of submission enable the Commission to obtain the views of market participants and others to ascertain whether the proposed product would be readily susceptible to manipulation or would otherwise violate the Act. To this end, Commission staff routinely conduct trade interviews when reviewing novel instruments to ascertain the relative susceptibility of a product to manipulation. To be meaningful, these interviews require the release of the proposed instrument's terms and conditions.[19]

The Commission wishes to ensure that registered entities are fully aware that staff will summarily deny requests for confidential treatment of information that is publicly-available pursuant to statute or regulation. Accordingly, the Commission proposes also to amend part 40 by adding new paragraph (d) to regulation 40.8 to provide that staff will not consider requests for confidential treatment of information that is subject to section 5(d)(7) or regulations 40.3(a)(7) and 40.5(a)(8).

C. Comments Received

In response to its original proposal, the Commission received comment letters from CME Group, CBOE Futures Exchange (CFE), and the New York Mercantile Exchange (NYMEX). These comments raised several related concerns.

1. Market Maker Programs and Mechanisms for Executing Transactions

CFE generally supported proposed regulation 40.8(c) but urged that it be further amended to specify that the terms and conditions of market maker programs and other compensation and incentive plans will be denied confidential treatment because they are rules as defined in Commission regulation 40.1. The CME, on the other hand, asserted that DCMs have a legitimate commercial and competitive interest in maintaining the confidentiality of specific information about the contractual obligations of, and incentives offered to, their market makers.

Market maker and incentive programs are considered ''rules'' under Commission regulations and are presumptively public. Accordingly, it is agency practice to post compensation and incentive information promptly on the Commission's Web site. The Commission believes that market participants should have the opportunity to evaluate the compensation structures of incentive programs since these arrangements may affect the quality of price quotations provided by market makers as well as liquidity in the market. Because material of this kind routinely is made public, disclosure will not create a competitive disadvantage for any exchange.[20] Incentive programs may, however, include information for which confidential treatment is appropriate. Commission staff has, for example, withheld information relating to participant names, bid-ask spreads and minimum size requirements of bid/ask spreads because access to this information could give an unfair advantage to potential counterparties of market makers as well as providing other markets with a competitive edge when setting up their own market maker programs and negotiating agreements with potential market makers. In these circumstances, the Commission believes that while incentive programs may presumptively be public, those programs may from time to time include commercially valuable information which may be entitled to protection. Accordingly, summary denial of confidential treatment to all information in incentive programs would be inappropriate.

NYMEX made a similar argument in connection with the Commission's determination not to process confidential treatment requests covering, inter alia, the mechanisms for executing transactions on or through the facilities of the contract market. NYMEX claims that a trading tool could potentially qualify as proprietary intellectual property for which a registered entity may seek protection under patent or trademark laws. The Commission notes that mechanisms for executing transactions on or through the facilities of a contract market are required by statute to be made publicly available.[21] The Commission also recognizes the importance to a registered entity of protecting what it believes to be commercially sensitive

[17] Mechanisms for executing transactions generally include such information as trading algorithms, market maker programs and information from an exchange's rulebook that pertain to or impact trading.

[18] Publicly available portions include: Transmittal letter, proposed rules, the applicant's regulatory compliance chart, documents establishing the applicant's legal status, and documents setting forth the applicant's governance structure. The Commission noted that regulation 40.8(a) is not intended to limit the information that may be released, but to specify the portions of an application that are automatically public and therefore would not be granted confidential treatment under any circumstances. 69 FR 67503 (Nov. 18, 2004).

[19] In cases of new products for which Commission approval has been requested, the Commission generally intends to continue its long-standing practice of requesting public comment on the terms and conditions by publication of notices in the **Federal Register**. Where notice in the **Federal Register** is impracticable or otherwise unnecessary, notice of a submission for voluntary approval and of the public availability of the proposed product's terms and conditions will be through the Commission's internet Web site (*http://www.cftc.gov*). The terms and conditions of products eligible for trading by self-certification will be available from the Commission at the time that the exchange legally could commence trading: The beginning of the business day following certification to the Commission.

[20] As CFE observed, the Commission's Office of General Counsel so reasoned in rejecting an exchange's claim that its market maker information was proprietary and protected under FOIA exemption (b)(4), which protects under certain circumstances commercial or financial information where its release could cause competitive harm to the submitter. Letter dated October 27, 2005 from Office of General Counsel regarding Freedom of Information Act Nos. 05–0138 and 05–0139.

[21] See Section 7(d)(8) of the CEA, 7 U.S.C. 7(d)(8) (DCM Core Principle 8).

information, and invites public comment with respect to specific types of trading tools that should be given consideration under a request for confidential treatment.

2. Limited Applicability of Proposed Regulation to Registered Entities

In its comment letter, NYMEX questioned why the proposed regulation singles out registered exchanges and clearing organizations for the new requirements, while other submitters of information would continue to follow the FOIA procedures in regulation 145.9 when requesting confidential treatment of submissions to the Commission. On the contrary, the proposed rule does not target a specific group of submitters but rather is directed toward specific categories of submissions—those filed pursuant to parts 40 and 41—for which confidential treatment is frequently claimed despite requirements in the Commodity Exchange Act and Commission regulations that those submissions be made available to the public. The harm to be remedied is the frequently unwarranted delay in making public information filed pursuant to these regulations. When registered entities have occasion to submit other types of information to the Commission, they would continue to follow the procedures provided in Commission regulation 145.9 for requesting confidential treatment under the FOIA of those submissions.

3. Relationship of the Proposed Procedures to the FOIA Process

Other concerns raised by the commenters may spring from a misunderstanding of the relationship between the proposed regulation and the FOIA. NYMEX, for example, appears to believe that all confidentiality issues arise in the context of the FOIA and must be made ''ripe'' by a FOIA request.[22] On the contrary, confidentiality issues frequently arise outside the scope of the FOIA and are resolved without reference to that statute.[23] As noted above, the Commission's responsibility to provide transparency with respect to certain information exists separately from its duty to implement the FOIA. The latter obligation is addressed by the Commission's part 145 regulations, which deal with disclosure issues in the context of public requests for information under the FOIA and are not necessarily relevant or useful outside that context. In contrast, while registered entities' interest in having their part 40 and 41 submissions protected from disclosure may implicate the FOIA, it is separately in tension with their statutory responsibility to make certain information publicly available and with the Commission's commitment to providing transparency where appropriate. It is this tension, not the filing of a FOIA request, that signifies ''ripeness.'' As discussed above, the Commission's obligations are in some instances statutory. In other circumstances, the Commission has concluded as a matter of policy that public access information about products and trading mechanisms generally outweighs the asserted right of a registered entity to keep its information confidential. Without the measures provided by the proposed rulemaking, the Commission's ability fully to consider the impact of a rule on the public would continue to be dependent on the filing of a FOIA request to trigger the resolution of confidentiality and disclosure issues.

CME's observation that such a request ''is likely never to be received'' [24] highlights the necessity for the proposed regulation. The Commission frequently has been hobbled in its efforts to make information public by confidential treatment requests which, while perhaps not calculated to do so, can create a lengthy delay in the disclosure of information the Commission believes should be publicly available. The amendments we have proposed will permit the Commission to quickly resolve confidentiality issues in connection with material submitted pursuant to parts 40 and 41.

In that regard, the CME questioned the fairness of the proposed regulation, asserting that it would prejudice FOIA requesters who would not have an opportunity to respond to an appeal under the procedures specified in the proposal. Similarly, the exchange expressed concern that because the Commission may reconsider a grant of confidential treatment if a FOIA request is subsequently made for the material, the registered entity would be required to submit a ''new updated detailed written justification based on possible changed circumstances at the time of the appeal.'' [25]

The Commission believes these concerns are unwarranted. If an appeal were filed by a registered entity under the procedures specified in proposed regulation 40.8(c), no FOIA requester's rights would be compromised, because the appeal would be based on staff's initial determination to disclose the subject information prior to the filing of a FOIA request. Should a FOIA requester subsequently seek information given confidential treatment under regulation 40.8(c), the process would be governed by FOIA regulation 145.9, and both the FOIA requester and the submitter would have the appeal rights provided by regulation 145.9. In these circumstances, the Commission believes that fairness requires that the registered entity be given an opportunity to update its detailed written justification based on ''possible changed circumstances at the time of the appeal'' and to respond to specific arguments raised by the requester. An updated detailed written justification is not required, however, and the registered entity may opt instead to rely on its original justification. In such cases, the Commission's decision would consider the registered entity's detailed written justification submitted under regulation 40.8(c) and the FOIA requester's response to it, if any. Because the comments reflect some confusion in this regard, the Commission proposes to further amend proposed regulation 40.8(c) to clarify that appeal rights and subsequent FOIA requests in which confidential treatment is an issue will continue to be governed by regulation 145.9.

Finally, the Commission is not persuaded by CME's argument that the proposed regulation would impose numerous costs on the Commission, registered entities and FOIA requesters. All of the purported costs and burdens cited by the exchange appear to be premised on its misunderstanding that issues of disclosure exist only in the context of the FOIA and that their resolution prior to receipt of a FOIA request would be premature as well as duplicative. As discussed above, it is the Commission's view that its ability to make information publicly available cannot depend upon circumstances outside its control—such as receipt of a FOIA request. Further, the registered

[22] The CME similarly cites a perceived burden on Commission staff, which may be ''inundated'' with detailed written justifications for every confidential treatment request where no FOIA request is pending.

[23] The Commission notes that the SEC specifies one procedure for requesting confidential treatment under the FOIA (17 CFR 200.83) and a separate procedure where the FOIA is not implicated. (17 CFR 240.24b–2) The latter applies to such filings as registration statements, reports, applications, statements or other documents filed pursuant to the Securities Exchange Act of 1934. Like the rule proposed by the Commission, the SEC regulation requires that a written justification be submitted simultaneously with the filing. An initial decision to grant or disallow a request for nondisclosure of information is not triggered by a FOIA request, and a submitter objecting to an initial decision to deny confidential treatment may petition the SEC for review of that decision.

[24] Letter dated August 20, 2007 from CME Group, at 2 and 3.

[25] Id. at 3.

entity may choose not to assume the burden and cost, if any, of updating its original detailed written justification in the event a subsequent FOIA request is received. The Commission nonetheless believes that fundamental fairness dictates that the registered entity be given the opportunity to do so. Finally, the exchange has not explained its claim that the proposed procedures would disadvantage FOIA requesters, either financially or otherwise.

D. Proposed Amendment to Appendix D—Submission Cover Sheet and Instructions

In 2004, the Commission amended the part 40 and 41 regulations to specify the portions of DTEF, DCO and DCM applications that are publicly available. At that time, the Commission also added Appendix D to the part 40 regulations prescribing a Submission Cover Sheet to accompany all self-certified rules, self-certified products, rules submitted for Commission approval, notifications of rule amendments, and non-material agricultural rule changes.[26] To this end, Appendix D included a copy of the Submission Cover Sheet along with step-by-step instructions for completing and returning the form to the Commission. The cover sheet assists Commission staff in preparing and maintaining the accuracy of the submissions being published on the Commission's Web site. In order to alert staff that a submission contains material that should not be published, the Commission proposes to amend the Submission Cover Sheet to include a prominently placed box to be checked when confidential treatment is being requested for any part of a submission filed pursuant to part 40 or 41. The Commission also proposes to amend Appendix D to part 40 to add an instruction to ensure that registered entities are fully aware that checking the ''confidential treatment requested'' box on the Submission Cover Sheet in no way obviates the submitter's responsibility to comply with the confidential treatment requirements established in proposed regulation 40.8(c) and will not substitute either for notice or for full compliance with those requirements.

E. Freedom of Information Act Amendments

Commission regulation 145.9(b) defines the scope of the Commission's confidential treatment regulations: Its provisions apply only where the Commission has not specified that an alternative procedure be utilized in connection with a particular study, report, investigation, or other matter. The Commission proposes to amend regulation 145.9(b) to reference the alternative procedure provided in regulation 40.8(c) for submissions filed under parts 40 and 41.

III. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15(a) as amended does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of a regulation outweigh its costs. Rather, section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could, in its discretion, give greater weight to any one of the five enumerated areas and could, in its discretion, determine that, notwithstanding its costs, a particular 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 is considering the costs and benefits of these proposed regulations in light of the specified provisions of section 15(a) of the Act:

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

2. Efficiency and competition. The proposed amendments are expected to benefit efficiency by making the non-confidential information from registered entity submissions available to the public in a more timely manner. The Commission anticipates that the costs of compliance with the confidential treatment procedures will be minimal. The proposed amendments should have no effect, from the standpoint of imposing costs or creating benefits, on competition in the futures and options markets.

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

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

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

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

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* (2000), requires federal agencies, in proposing regulations, to consider the impact of those regulations on small entities. The regulations proposed herein would affect derivatives transaction execution facilities, designated contract markets, and derivatives clearing organizations. The Commission previously has determined that the foregoing entities are not small entities for purposes of the RFA.[27] Accordingly, the Acting Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act of 1995

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

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

The expected effect of the proposed amended regulations will be to increase the burden previously approved by OMB for this collection of information by 16 hours as it will result in the filing

[26] 69 FR 67503 (Nov. 18, 2004).

[27] 47 FR 18618, 18619 (April 30, 1982), discussing contract markets; 66 FR 42256, 42268 (August 10, 2001), discussing exempt boards of trade, exempt commercial markets and derivatives transaction execution facilities; 66 FR 45605, 45609 (August 29, 2001), discussing derivatives clearing organizations.

of approximately five additional pages when a registered entity files a detailed written justification and confidential appendix under Commission Regulations 40.2, 40.4, 40.5, and 40.6.

The estimated burden was calculated as follows:

Estimated number of respondents: 12.

Annual responses by each respondent: .30.

Total annual responses: 4.

Estimated average hours per response: 4.

Annual reporting burden: 16.

Collection of Information: Rules Relating to part 41, Security Futures Products, OMB Control Number 3038–0059.

The expected effect of the proposed amended regulations will be to increase the burden previously approved by OMB for this collection of information by 3.6 hours as it will result in the filing of approximately five additional pages when a registered entity files a detailed written justification and confidential appendix under Commission regulations 41.23 and 41.24.

Estimated number of respondents: 3.

Annual responses by each respondent: .30.

Total annual responses: .90.

Estimated average hours per response: 4.

Annual reporting burden: 3.6.

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

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

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. This does not affect the deadline for the public to comment to the Commission on the proposed regulations. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5160.

List of Subjects

17 CFR Part 40

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

17 CFR Part 41

Security Futures.

17 CFR Part 145

Commission records and information.

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

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

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

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

2. Section 40.2 is amended by adding paragraph (a)(3)(v) to read as follows:

§ 40.2 Listing Products for trading by certification.

(a) * * *

(3) * * *

(v) A request for confidential treatment as permitted under the procedures of § 40.8.

* * * * *

3. Section 40.3 is amended by revising paragraph (a)(7) to read as follows:

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

(a) * * *

(7) Include a request for confidential treatment as permitted under the procedures of § 40.8.

* * * * *

4. Section 40.5 is amended by revising paragraph (a)(8) to read as follows:

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

(a) * * *

(8) Include a request for confidential treatment as permitted under the procedures of § 40.8.

* * * * *

5. Section 40.6 is amended by adding new paragraph (a)(3)(vi) to read as follows:

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

(a) * * *

(3) * * *

(vi) A request for confidential treatment as permitted under the procedures of § 40.8.

* * * * *

6. Section 40.8 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 40.8 Availability of public information.

* * * * *

(c) A registered entity's filing of new products under the self-certification procedures, new products for Commission review and approval, new rules and rule amendments for Commission review and approval, and new rules and rule amendments submitted under the self-certification procedures will be treated as public information unless covered by a request for confidential treatment. If a registered entity files a request for confidential treatment, the following procedures will apply:

(1) A detailed written justification of the confidential treatment request must be filed simultaneously with the request for confidential treatment. The form and content of the detailed written justification shall be governed by § 145.9(e) of this chapter;

(2) All material for which confidential treatment is requested must be segregated in an appendix to the submission;

(3) The submission itself must indicate that material has been segregated and, as appropriate, redacted;

(4) Commission staff may make an initial determination with respect to the request for confidential treatment without regard to whether a request for the information has been sought under the Freedom of Information Act;

(5) A submitter of information under this Part may appeal an adverse decision by staff to the Commission's Office of General Counsel. The form and content of such appeal shall be governed by § 145.9(g) of this chapter.

(6) The grant of any part of a request for confidential treatment under this section may be reconsidered if a subsequent request under the Freedom of Information Act is made for the information.

(d) Commission staff will not consider requests for confidential treatment of information that is required to be made public under Section 5(d)(7) of the Act or Commission Regulations 40.3(a)(7) or 40.5(a)(8).

6. Appendix D is amended by adding a new sentence to the end of section 8, ''Other requirements,'' to read as follows:

Appendix D to Part 40—Submission Cover Sheet and Instructions

* * * * *

(8) *Other requirements*—* * * Checking the box marked ''confidential treatment requested'' on the Submission Cover Sheet does not obviate the submitter's responsibility to comply with all applicable requirements for requesting confidential treatment in Rule 40.8(c) and, where appropriate, Rule 145.9, and will not substitute for notice or full compliance with such requirements.

* * * * *

PART 41—SECURITY FUTURES PRODUCTS

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

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

8. Section 41.23 is amended by adding new paragraph (a)(7) to read as follows:

§ 41.23 Listing of security futures products for trading.

(a) * * *

(7) Includes a request for confidential treatment as permitted under the procedures of § 40.8.

* * * * *

9. Section 41.24 is amended by adding new paragraph (a)(6) to read as follows:

§ 41.24 Rule amendments to security futures products.

(a) * * *

(6) Includes a request for confidential treatment as permitted under the procedures of § 40.8.

* * * * *

PART 145—COMMISSION RECORDS AND INFORMATION

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

Authority: Pub. L. 99–570, 100 Stat. 3207; Pub. L. 89–554, 80 Stat. 383; Pub. L. 90–23, 81 Stat. 54; Pub. L. 98–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)); unless otherwise noted.

11. Section 145.9 is amended by revising paragraph (b) to read as follows:

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

* * * * *

(b) Scope. The provisions of this section shall apply only where the Commission has not specified that an alternative procedure be utilized in connection with a particular study, report, investigation, or other matter. *See* § 40.8 for procedures to be utilized in connection with filing information required to be filed pursuant to 17 CFR parts 40 and 41.

* * * * *

Issued in Washington, DC on July 23, 2008, by the Commission.

David Stawick,

Secretary of the Commission.

[FR Doc. E8–17529 Filed 7–31–08; 8:45 am]

BILLING CODE 6351–01–P

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 410

Proposed Amendments to the Water Code and Comprehensive Plan To Implement a Revised Water Audit Approach to Identify and Control Water Loss

AGENCY: Delaware River Basin Commission.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: The Delaware River Basin Commission (''Commission'' or ''DRBC'') will hold a public hearing to receive comments on proposed amendments to the Commission's *Water Code* and *Comprehensive Plan* to phase in a requirement for water purveyors to follow a revised water audit approach to identify and control water loss.

DATES: Comments: Written comments must be received by 5 p.m. October 3, 2008.

Meeting and public hearing: The Commission will hold an informational meeting on Wednesday, September 10, 2008 from 4 p.m. to 6 p.m. The Commission also will hold a public hearing on Thursday, September 25, 2008 at the Commission's office building. The hearing will begin at 1:30 p.m. and will continue until all those who wish to testify are afforded an opportunity to do so. For more information regarding the procedures for these hearings and comments, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The informational meeting and public hearing will be held at the Commission's office building, which is located at 25 State Police Drive, West Trenton, New Jersey. Driving directions are available on the Commission's Web site—*http://www.drbc.net.* Please do not rely on Internet mapping services as they may not provide accurate directions to the DRBC.

FOR FURTHER INFORMATION, CONTACT: For further information, please contact Pamela Bush, Commission Secretary and Assistant General Counsel, Delaware River Basin Commission, at 609–883–9500 ext. 203.

SUPPLEMENTARY INFORMATION: Persons wishing to testify at the public hearing are asked to register in advance by phoning Ms. Paula Schmitt at 609–883–9500, ext. 224.

Written comments may be submitted as follows: If by e-mail, to *paula.schmitt@drbc.state.nj.us;* if by fax, to Commission Secretary at 609–883–9522; if by U.S. Mail, to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628–0360; or if by overnight mail, to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628–0360. In all cases, please include the commenter's name, address and affiliation, if any, in the comment document and include ''Water Audit'' in the subject line.

Background. An estimated 150 million gallons of treated and pressurized water is physically lost from public water supply distribution systems in the Delaware River Basin per day and current methods to account for, track and reduce this loss are inadequate.

The purpose of the proposed amendments is to phase in a program requiring water purveyors to perform a water audit and report their findings in accordance with a new audit structure established by the American Water Works Association (AWWA) and the International Water Association (IWA). These new methods are widely regarded as superior to the existing approach, which entails tracking ''unaccounted for water,'' which is no longer considered best practice.

The new water audit methodology provides a rational approach that will facilitate more consistent tracking and reporting than the existing approach allows. It will help water managers and regulators, including the Commission, state agencies, and utility managers, target their efforts to improve water supply efficiency, thereby reducing water withdrawals. Improving water accountability will contribute to achieving objective 1.3.C of the *Water Resources Plan for the Delaware River Basin,* which calls for ensuring