

39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2003–NM–12–AD.

Applicability: Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (collectively called A300–600), and A310 series airplanes; certificated in any category; on which Airbus Modification 12340 or 12556 has not been done; and A310 series airplanes on which Airbus Modification 3881 has been done.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the attachment system of the cargo insulation blankets, which could result in detachment and consequent tearing of the blankets, resulting in blanket pieces being ingested into and jamming the forward outflow valve of the pressure regulation subsystem, which could lead to cabin depressurization and adversely affect continued safe flight of the airplane, accomplish the following:

Modification

(a) Within 1 year after the effective date of this AD: Modify the attachment system of the insulation blankets of the forward cargo compartment by doing all the applicable actions per the Accomplishment Instructions of Airbus Service Bulletin A300–31–6045 (for Model A300–600 series airplanes) or A310–21–2059 (for Model A310 series airplanes), both Revision 01, both dated May 22, 2002, as applicable. Repair any damaged insulation blanket before further flight, per the applicable service bulletin.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–626(B) R1, dated March 19, 2003.

Issued in Renton, Washington, on March 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 04–7708 Filed 4–5–04; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

RIN 3038–AC06

Foreign Futures and Foreign Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is proposing to amend Part 30 of the Commission’s regulations to clarify when foreign futures and options brokers who are members of a foreign board of trade must register or obtain an exemption from registration. The Commission proposes to modify Rule 30.4(a) by clarifying that foreign futures and options brokers, including those with U.S. bank branches, are not required to register as futures commission merchants (FCMs) pursuant to Rule 30.4, or seek exemption from registration under Rule 30.10, if they fall generally into the following categories: Those that carry customer omnibus accounts for U.S. FCMs; those that carry U.S. affiliate accounts that are proprietary to the foreign futures and options broker; and those that carry U.S. accounts that are proprietary to a U.S. FCM. In addition, a foreign futures and options broker that has U.S. bank branches will be eligible for a Rule 30.10 comparability exemption or exemption from registration under Rule 30.4 based upon compliance with conditions specified in proposed Rule 30.10(b)(1) through (6).

DATES: Comments must be received by June 7, 2004.

ADDRESSES: You may submit comments, identified by RIN 3038–AC06, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* secretary@cftc.gov. Include “Commission Rules 30.1, 30.4 and 30.10—Registration and Exemption” in the subject line of the message.

- *Fax:* (202) 418–5521.

- *Mail:* Send to Jean A. Webb, Secretary of the Commission, 1155 21st Street, NW., Washington DC 20581.

- *Courier:* See above.

Instructions: All comments received will be posted without change to <http://www.cftc.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

Lawrence B. Patent, Deputy Director, or Susan A. Elliott, Special Counsel,

Compliance and Registration, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5439 or (202) 418–5464, or electronic mail: lpotent@cftc.gov or selliott@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

This is a reproposal of rules first proposed on August 26, 1999,¹ with two adjustments.² The 1999 proposals would have amended Part 30 of the Commission’s rules to clarify when foreign futures and options brokers that are members of a foreign board of trade or affiliates of U.S. FCMs must register under the Act or obtain an exemption from registration under the Act. The comment period ended on October 25, 1999 without any comments received. Soon thereafter, a no-action request was submitted that touched upon some of the issues addressed by the proposal, to which the staff responded. The staff’s no-action letter permitted the New York branch of a French bank to register in the U.S. as an Introducing Broker, to be guaranteed by a registered FCM that is a subsidiary of the same bank, and to introduce business to the London branch of the same bank. The letter stated that staff would not recommend enforcement action against the bank or its New York or London branches solely upon their failure to register as FCMs under the Act, or against the U.S. FCM or the bank’s New York or London branches for failure of the New York branch to introduce all customer accounts to the guaranteeing U.S. FCM, as required by Rule 1.57(a)(1).³

The Commission initially postponed reproposal of these rule amendments in order to permit time to assess the impact of its no-action letter, which permitted

¹ 64 FR 46613 (August 26, 1999).

² The 1999 proposal required an applicant for a Rule 30.10 exemption with a U.S. bank branch to file a specified set of representations with the National Futures Association (NFA). This proposal instead lists the representatives as conditions for compliance, in order to reduce the paperwork necessitated by these rule amendments. The second change from the 1999 proposal is that the definitional changes proposed, adding “foreign futures and options customer omnibus account” and “foreign futures and options broker” (“FFOB”), were adopted as Rules 30.1(d) and (e), respectively, in connection with the adoption of Rule 30.12 (65 FR 47275, 47280, August 2, 2000). Rule 30.12 was proposed in a separate release issued simultaneously with the proposal of the changes discussed herein on August 26, 1999 (64 FR 46618).

³ The text of the letter is published on the CFTC Web site as Letter 00–94, “Rules 30.10 and 30.4a: No-Action Relief in Connection with Registration as an Introducing Broker,” and at [1999–2000 Transfer Binder] Comm. Fut. L. Rep. ¶28.279, September 27, 2000.

the U.S. branch of a foreign bank in a Part 30 jurisdiction to register as an IB in the U.S., notwithstanding the Rule 30.10 registration exemption of its parent company.⁴ Reproposal was also deferred due to the passage of the Commodity Futures Modernization Act (CFMA) in December of 2000, and the concurrent necessity for substantial rulemakings to implement the mandate of that legislation.

Notwithstanding these developments, the Commission's Part 30 program continues to operate much as it did when adopted in 1987.⁵ Part 30 governs, generally, the solicitation and sale of foreign futures⁶ and foreign option⁷ contracts to customers⁸ located in the U.S. These rules were promulgated pursuant to Sections 2(a)(1)(A), 4(b) and 4c of the Act, which vest the Commission with exclusive jurisdiction over the offer and sale, in the U.S., of options and futures contracts traded on or subject to the rules of a board of trade, exchange or market located outside of the U.S.

When it adopted Part 30, the Commission recognized that many complexities would need to be addressed by the staff in the years after adoption of these rules.⁹ Soon after the Commission adopted the original Part 30 rules, the staff of the Division of Trading and Markets¹⁰ published

several interpretative letters and no-action positions regarding the application of the registration requirements of Part 30 to foreign firms, and their ability to obtain an exemption from certain of the requirements of Part 30, pursuant to Rule 30.10. Those letters and positions were described in some detail in the August 1999 Notice of Proposed Rulemaking.¹¹ With the proposed amendments to Part 30 discussed below, the Commission will codify some of those interpretations and positions. Persons who properly relied on interpretative statements in the past must henceforth comply with the new rules, if adopted.¹²

II. Rule Amendments

Rule 30.4(a) requires any person who solicits or accepts orders and/or money for foreign futures and options contracts from domestic foreign futures or foreign options customers¹³ to register as an FCM under the Act. Rule 30.4(e) requires registered FCMs to maintain an office in the U.S. that is managed by an individual domiciled in the U.S. and registered with the Commission as an associated person ("AP"). Rule 30.10 permits any person to seek exemption from any provision of Part 30.

The Commission believes that it can provide clarity to its registration requirements under Part 30 by specifically addressing, in Rule 30.4, when registration by an FFOB is *not* required. Thus, the Commission proposes amending Rule 30.4(a) to clarify that FFOBs that carry foreign futures and foreign options customer omnibus accounts¹⁴ of U.S. FCMs, but have no direct contact with the customers whose accounts comprise the omnibus accounts, are not required to register as FCMs. This is the case even if the FFOB has U.S. bank branches. The Commission also proposes amending Rule 30.4(a) to clarify that an FFOB that carries proprietary accounts of a U.S. FCM, or an FFOB that trades for its own proprietary accounts (including accounts of its U.S. affiliates and others whose accounts are "proprietary" to the

FFOB under CFTC Rule 1.3(y)), need not register as an FCM so long as certain conditions are met. These FFOBs, however, otherwise remain subject to provisions of Part 30 that are not dependent upon registration as an FCM, such as the antifraud provision of Rule 30.9.

In addition, the Commission proposes amending Rule 30.10 to clarify that an FFOB with U.S. bank branches may be eligible for confirmation of Rule 30.10 relief if it complies with the following conditions:

(1) No U.S. bank branch, office or division will engage in the trading of futures or options on futures within or from the U.S., except for its own account¹⁵;

(2) No U.S. bank branch, office or division will refer any foreign futures or foreign options customer to the FFOB or otherwise be involved in the FFOB's business in foreign futures and foreign option transactions;

(3) No U.S. bank branch, office or division will solicit any foreign futures or foreign options business or purchase or sell foreign futures or foreign option contracts on behalf of any foreign futures or foreign option customers or otherwise engage in any activity subject to regulation under Part 30 or engage in any clerical duties related thereto. If any U.S. division, office or branch desires to engage in such activities, it will only do so through an appropriate CFTC registrant;

(4) The FFOB will maintain outside the U.S. all contract documents, books and records regarding foreign futures and option transactions;

(5) The FFOB and each of its U.S. bank branches, offices or divisions agree to provide upon request of the Commission, the NFA or the U.S. Department of Justice, access to their books and records for the purpose of ensuring compliance with the undertakings and consents to make such records available for inspection at a location in the U.S. within 72 hours after service of the request;¹⁶ and

⁴ No subsequent requests for no-action by Part 30 participants have proposed IB registration of a U.S. bank branch as a way of authorizing referral of business from the U.S. bank branch to foreign-based branches.

⁵ 52 FR 28980 (August 5, 1987). CFTC rules may be found at 17 CFR Ch. 1 (2003).

⁶ "Foreign futures" as defined in Part 30 means "any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade." Commission Rule 30.1(a).

⁷ "Foreign option" as defined in Part 30 means "any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an 'option', 'privilege', 'indemnity', 'bid', 'put', 'call', 'advance guaranty', or 'decline guaranty', made or to be made on or subject to the rules of any foreign board of trade." Commission Rule 30.1(b).

⁸ Pursuant to Commission Rule 30.1(c), "Foreign futures or foreign options customer" means "any person located in the United States, its territories or possessions who trades in foreign futures or foreign options: Provided, That an owner or holder of a proprietary account as defined in paragraph (y) of [Commission Rule] 1.3 shall not be deemed to be a foreign futures or foreign options customer within the meaning of §§ 30.6 and 30.7 of this part."

⁹ "The Commission is mindful that the implementation of a regulatory scheme such as this is an evolving process, particularly as the issues are numerous and complex. Accordingly, the Commission invites affected persons to seek interpretations of the rules, no-action positions and exemptions, as appropriate. In this regard, the Commission has determined to retain the general exemptive provision set forth in rule 30.10, as proposed." 52 FR at 28980-28981.

¹⁰ Under the CFTC staff reorganization effective July 2002, the Division of Trading and Markets was

eliminated and the Part 30 functions were assumed by the new Division of Cleaning and Intermediary Oversight.

¹¹ 64 FR 46613, 46614-46616.

¹² If the Commission adopts the proposed amendments, prior staff positions on these subjects will be superceded. Because the rule amendments contain no substantive changes to prior staff interpretative statements and no-action letters, no party should be disadvantaged. The new rules would make these staff positions more accessible and more widely understood and obviate the need for individualized relief.

¹³ See n. 8, *supra*.

¹⁴ "Foreign futures and foreign options customer omnibus accounts" are defined at Rule 30.1(d), 17 CFR § 30.1(d) (2003).

¹⁵ That is, the "house" account of the entity. This is the "narrow" definition of proprietary, as set forth in Commission Rule 1.17(b)(3).

¹⁶ The Commission has recognized that Japanese and Hong Kong laws require that original books and records of any firm located within either country be maintained within the local jurisdiction. See *CFTC Staff Letter* 95-83 [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,559 at 43,490 (September 20, 1995) (no-action position permitting the Japanese and Hong Kong affiliates of a U.S. FCM to accept directly foreign futures and options orders from certain sophisticated U.S. customers); 62 FR 47792 (September 11, 1997) (extending the relief under *CFTC Staff Letter* 95-83 to the Japanese and Hong Kong affiliates of all U.S. FCMs). If the proposed amendments are adopted, that letter will

Continued

(6) Although it will continue to engage in normal commercial activities, no U.S. bank branch, office or division will establish relationships in the U.S. with the broker's foreign futures and foreign options customers for the purpose of facilitating or effecting transactions in foreign futures and foreign option contracts in the U.S.

The Commission proposes that any FFOB that would not be required to register under the proposed Rule 30.4(a) because it solely carries a U.S. customer omnibus account, an account that would be classified as proprietary to the broker under Commission Rule 1.3(y), or a U.S. FCM's proprietary account, is also not required to register solely because it has U.S. bank branches, so long as it complies with the conditions specified in Rule 30.10(b)(1)–(6), as listed above.

The Commission solicits comment regarding the number of foreign futures or options brokers' non-bank branches located in the United States, as well as information concerning their activities.¹⁷ The Commission also requests comment on the advisability of expanding the relief provided by the proposed rule amendments to foreign futures and options brokers with any type of U.S. branch, not just bank branches.

II. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the

be superseded. For the purpose of this rulemaking, the Commission will allow foreign futures and options brokers in Japan and Hong Kong to satisfy the books and records requirement by: (1) Providing within 72 hours authenticated copies of its books and records upon request of a Commission, NFA or U.S. Department of Justice representative; (2) providing within 72 hours access to original books and records in the foreign jurisdiction; (3) waiving objection to the admissibility of the copies as evidence in a Commission, NFA or U.S. Department of Justice action against the foreign futures and options broker; and (4) agreeing in the event of a proceeding to provide a witness to authenticate copies of books and records given to the Commission, NFA, or the U.S. Department of Justice. The Commission is clarifying that the books and records from a Japanese or Hong Kong FFOB are also subject to request by NFA and U.S. Department of Justice representatives, as is the case for an FFOB in any other jurisdiction.

¹⁷ The rationale for providing relief to foreign firms with bank branches in the U.S. is that those branches are otherwise regulated by the banking authorities. Although this rationale would be inapplicable to non-bank branches, there may be other reasons why exemption from registration under Part 30 would be appropriate.

impact of its rules on such entities in accordance with the RFA.¹⁸ The proposed rules discussed herein would affect foreign members of foreign boards of trade who perform the functions of an FCM, some of which may be foreign affiliates of U.S. FCMs. The Commission previously has determined that, based upon the fiduciary nature of the FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact these proposed rules may have on small entities.

B. Paperwork Reduction Act

When publishing proposed rules, the Paperwork Reduction Act of 1995¹⁹ imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act, the Commission, through this rule proposal, solicits comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection 3038–0023, including this proposed rule, is as follows:

Average burden hours per response:
1645.

Number of respondents: 73,610.

Frequency of response: On occasion; annually; semi-annually; quarterly.

The burden associated with this specific proposed rule, is as follows:
Average burden hours per response:
.05.

Number of Respondents: 110.

Frequency of response: On occasion.

Persons wishing to comment on the estimated paperwork burden associated with this proposed rule should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington DC 20581, (202) 418–5160.

C. Cost-Benefit Analysis

Section 15(a) of the Act 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) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) 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 rule 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. These proposed amendments are intended to clarify when foreign futures and options brokers who are members of a foreign board of trade must register or obtain an exemption from registration. The Commission is considering the costs and benefits of these rules in light of the specific provisions of section 15(a) of the Act:

1. Protection of market participants and the public. The amendments do not change the requirements to qualify for the exemption. Accordingly, they should have no effect on the Commission's ability to protect market participants and the public.

2. Efficiency and competition. The amendments are expected to benefit

¹⁸ 47 FR 18618–18621 (April 30, 1982).

¹⁹ Pub. L. 104–13 (May 13, 1995).

efficiency and competition by enhancing understanding of the Commission's requirements for exemption.

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 adopted herein should have no effect on the risk management practices of the futures and options industry.

5. Other public interest considerations. The amendments clarify the Commission's requirements for exemption of foreign futures and options brokers who are members of a foreign board of trade. Greater clarity should result in a system that is easier to understand and thereby more efficient.

After considering these factors, the Commission has determined to propose the amendments discussed above.

List of Subjects in 17 CFR Part 30

Definitions, Foreign futures, Foreign options, Reporting and recordkeeping requirements, Registration requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1), 4(b), 4c and 8 thereof, 7 U.S.C. 2, 6(b), 6c and 12a (1982), and pursuant to the authority contained in 5 U.S.C. 552 and 552b (1982), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 30—FOREIGN OPTIONS AND FOREIGN FUTURES TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

2. Section 30.4 is proposed to be amended by revising paragraph (a) to read as follows:

§ 30.4 Registration required.

* * * * *

(a) To solicit or accept orders for or involving any foreign futures contract or foreign options transaction and, in connection therewith, to accept any money securities or property (or extend credit in lieu thereof), to margin,

guarantee or secure any trades or contracts that result or may result therefrom, unless such person shall have registered, under the Act, with the Commission as a futures commission merchant and such registration shall not have expired nor been suspended nor revoked; *provided that*, a foreign futures and options broker (as defined in § 30.1(e)) is not required to register as an FCM:

(1) In order to accept orders from or to carry a U.S. futures commission merchant foreign futures and options customer omnibus account, as that term is defined in Rule 30.1(d);

(2) In order to accept orders from or to carry a U.S. FCM proprietary account, as that term is defined in paragraph (y) of § 1.3 of this chapter; or

(3) In order to accept orders from or carry a U.S. affiliate account which is proprietary to the foreign broker, as "proprietary account" is defined in paragraph (y) of § 1.3 of this chapter. Such foreign futures and options broker remains subject to all other applicable provisions of the Act and of the rules, regulations and orders thereunder. Foreign futures and options brokers that have U.S. bank branches, offices or divisions engaging in the above-listed activity are not required to register as an FCM if they comply with the conditions listed in § 30.10(b)(1) through (6).

* * * * *

3. Section 30.10 is proposed to be amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 30.10 Petitions for exemption.

(a) Any person adversely affected by any requirement of this part may file a petition with the Secretary of the Commission, which petition must set forth with particularity the reasons why that person believes that he should be exempt from such requirement. The Commission may, in its discretion, grant such an exemption if that person demonstrates to the Commission's satisfaction that the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. The petition will be granted or denied on the basis of the papers filed. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

(b) Any foreign person that files a petition for an exemption under this section shall be eligible for such an

exemption notwithstanding its presence in the United States through U.S. bank branches or divisions if, in conjunction with a petition for confirmation of Rule 30.10 comparability relief under an existing Rule 30.10 Commission order, it complies with the following conditions:

(1) No U.S. bank branch, office or division will engage in the trading of futures or options on futures within or from the United States, except for its own proprietary account;

(2) No U.S. bank branch, office or division will refer any foreign futures or options customer to the foreign broker or otherwise be involved in the foreign broker's business in foreign futures and option transactions;

(3) No U.S. bank branch, office or division will solicit any foreign futures or options business or purchase or sell foreign futures and option contracts on behalf of any foreign futures or option customers or otherwise engage in any activity subject to regulation under part 30 or engage in any clerical duties related thereto. If any U.S. division, office or branch desires to engage in such activities, it will only do so through an appropriate CFTC registrant;

(4) The foreign person will maintain outside the United States all contract documents, books and records regarding foreign futures and option transactions;

(5) The foreign person and each of its U.S. bank branches, offices or divisions agree to provide upon request of the Commission, the National Futures Association or the U.S. Department of Justice, access to their books and records for the purpose of ensuring compliance with the foreign undertakings and consents to make such records available for inspection at a location in the United States within 72 hours after service of the request; and

(6) Although it will continue to engage in normal commercial activities, no U.S. bank branch, office or division of the foreign person will establish relationships in the United States with the applicant's foreign futures and options customers for the purpose of facilitating or effecting transactions in foreign futures and option contracts in the United States.

Dated: March 30, 2004.

By the Commission.

Jean A. Webb,

Secretary of the Commission.

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