

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Parts 437**

[Docket No. FAA-2006-24197; Amendment Nos. 401-5, 404-4, 405-3, 406-4, 413-9, 420-3, 431-2, 437-0]

**Experimental Permits for Reusable Suborbital Rockets**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of Office of Management and Budget Approval for Information Collection.

**SUMMARY:** This notice announces the Office of Management and Budget's (OMB) approval of the information collection requirement in the final rule published April 6, 2007 (72 FR 17001). The sections of the final rule pending approval of this information collection request are effective on publication of this notice.

**DATES:** The FAA received OMB approval for the information collection requirement in the Final Rule published on April 6, 2007. The compliance date for information collection requirements in 14 CFR 437.21, 437.25, 437.27, 437.29, 437.31, 437.37, 437.41, 437.53, 437.55, 437.57, 437.59, 437.69, and 437.89 is August 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Randy Repcheck, Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8760; facsimile: (202) 267-5463; e-mail: [randy.repcheck@faa.gov](mailto:randy.repcheck@faa.gov).

**SUPPLEMENTARY INFORMATION:****Background**

On April 6, 2007, the FAA published the final rule, "Experimental Permits for Reusable Suborbital Rockets," in the **Federal Register**. The rule established application requirements for an operator of a manned or unmanned reusable suborbital rocket to obtain an experimental permit. The FAA also established operating requirements and restrictions on launch and re-entry of reusable suborbital rockets operated under a permit. The requirements above are in Title 14 of the Code of Federal Regulations parts 401, 404, 405, 406, 413, 415, 420, 431, and 437.

We noted, in the "Paperwork Reduction Act" section of the final rule, that affected parties did not need to comply with the information collection requirements of the rule until the Office of Management and Budget (OMB)

approved the FAA's request to collect the information.

In accordance with the Paperwork Reduction Act, OMB approved the FAA's request for new information collection on June 1, 2007, and assigned the information collection OMB Control Number 2120-0722. The control number was not available when the final rule was published, thus necessitating publication of this notice. The FAA request was approved by OMB without change and expires on June 30, 2010.

49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 46105, grants authority to the Administrator to publish this notice. The final rule (72 FR 17001) became effective on June 5, 2007, and the compliance date for information collection requirements in 14 CFR 437.21, 437.25, 437.27, 437.29, 437.31, 437.37, 437.41, 437.53, 437.55, 437.57, 437.59, 437.69, and 437.89 is August 31, 2007.

Issued in Washington, DC on August 24, 2007.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

[FR Doc. E7-17368 Filed 8-30-07; 8:45 am]

**BILLING CODE 4910-13-P**

**COMMODITY FUTURES TRADING COMMISSION****17 CFR Part 21****Special Calls**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") has adopted amendments to Part 21 of its regulations relating to special calls for information. The amendments will: Add to the types of information specified in § 21.02, which must be furnished upon special call, information regarding exchanges of futures for physical commodities or for derivatives positions, and information regarding delivery notices issued and stopped; and delegate to the Director of the Division of Market Oversight and the Director's delegates, the ability to issue special calls pursuant to sections 21.01 and 21.02.

**EFFECTIVE DATE:** August 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Don Heitman, Senior Special Counsel (telephone 202-418-5041, e-mail [dheitman@cftc.gov](mailto:dheitman@cftc.gov)), Division of Market

Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581.

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

The Commodity Exchange Act ("Act"), as amended by the Commodity Futures Modernization Act of 2000 ("CFMA"), Pub. L. No. 106-554, is intended, among other things, to "deter and prevent price manipulation or any other disruptions to market integrity."<sup>1</sup> To that end, the Commission, through its Division of Market Oversight ("Division"), conducts a comprehensive program of market surveillance. A centerpiece of this program is the large-trader reporting system, under which all large futures and option positions are reported to the Commission. Each day, for every active futures or option market, Division surveillance staff monitors the activities of large traders, key price relationships, and all relevant supply and demand factors in a continuous review for potential market problems. An essential element of the Commission's market surveillance program is the ability to make special calls for information from Commission registrants and other market participants.

**A. Information To Be Furnished Upon Special Call**

Part 17 of the Commission's regulations sets forth the routine reports that futures commission merchants, members of contract markets and foreign brokers (collectively, "reporting firms") are required to submit to the Commission.<sup>2</sup> These reports provide the information for the Commission's large trader reporting system. The Commission uses that information in its market surveillance program to detect and prevent market manipulation or other disruptions to market integrity in markets subject to Commission oversight.

By contrast, the purpose of the Commission's special call authority in Part 21 of the Commission's regulations is to provide the Commission with relevant information that is not routinely supplied to the Commission pursuant to other parts of the

<sup>1</sup> Commodity Exchange Act § 3(b), 7 U.S.C. § 5(b).

<sup>2</sup> The Commission has recently proposed amendments to its definition of the term, "foreign broker." The amended definition would also be relocated, from its current location at § 15.00(g) to § 1.3(xx). See 72 FR 15637 (April 2, 2007). If such amendments were to be adopted, there would be no change in a foreign broker's obligations to comply with the Commission's large trader or special call regulations set forth in 17 CFR Parts 15-21.

Commission's regulations such as Part 17. For example, the Commission may need to know about futures positions that are below the routine reporting levels specified in Part 15 of the Commission's regulations. Among possible reasons for such special needs for information may be a particular market situation that warrants unusually close Commission market surveillance, or when Commission staff is conducting an audit of reporting firms to ensure complete and accurate reporting.

The amendments to Part 21 require reporting firms to retain and make available to the Commission, upon a special call, information similar to that which they are required to report to the Commission pursuant to Part 17 of the Commission's regulations. Specifically, the amendments add two additional categories of information to the types of information specified in § 21.02, which must be furnished upon special call. The first additional category of information subject to special call under the amended rules includes information regarding futures contracts exchanged for physical commodities ("EFPs"), as well as futures contracts exchanged for other derivatives contracts, including exchanges of futures for options ("EFOs") and exchanges of futures for swaps ("EFSs"). The second additional category of information includes the amount of futures contracts where actual delivery of the underlying commodity has been initiated (i.e., delivery notices have been issued or received).

Section 21.02 applies to futures commission merchants ("FCMs"), introducing brokers ("IBs"), members of contract markets and foreign brokers. However, the first three of the foregoing categories are already subject to substantial reporting and recordkeeping requirements under § 1.35 of the Commission's regulations, which, among other things, requires FCMs, IBs and contract market members to maintain, and produce on request, the records that are also the subject of these rules. Therefore, as a practical matter, the amended rules impose new requirements only on foreign brokers (who are not subject to § 1.35).

Foreign brokers and other persons receiving a special call pursuant to § 21.02 are required by that regulation to furnish the information requested. Since such persons cannot comply with the legal requirement to furnish information pursuant to a special call without maintaining records from which to generate the information requested, it follows that persons subject to special calls under § 21.02 are required, by the

Commission's regulations, to maintain such records. Therefore, such records—including both those previously listed in § 21.02, and those that are added by this rule amendment—are subject to the five-year record retention requirements of § 1.31(a)(1) of the regulations, which provides in relevant part that:

All books and records required to be kept by the Act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first two years of the five-year period.

#### *B. Delegation of Authority*

The amendments adopted herein also delegate to the Director of the Division of Market Oversight, and the Director's delegates, the power to issue special calls pursuant to sections 21.01 and 21.02. Consistent with other delegations of authority to Commission senior staff, the delegation of the Part 21 special call authority allows the Director to submit to the Commission for its consideration any matter that has been delegated pursuant to the new section. The amendment also preserves the Commission's ultimate authority over the special calls by providing that, "nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated \* \* \* to the Director."

#### *C. The Proposed Rules*

These amendments were published for comment at 72 FR 34417, June 22, 2007, with a 30-day comment period. No comments were received in response to the notice of proposed rulemaking. Accordingly, the amendments have been adopted as proposed.

## **II. Cost Benefit Analysis**

Section 15 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 or order under the Act. By its terms, § 15(a) does not require the Commission to quantify the costs and benefits of its action or to determine whether the benefits of the action outweigh its costs. Rather, § 15(a) simply requires the Commission to "consider the costs and benefits" of the subject rule or order.

Section 15(a) further specifies that the costs and benefits of the proposed rule or order shall be evaluated in light of five broad areas of market and public concern: (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. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule or order is 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 amendments supplement the Commission's rules regarding its market surveillance program. That program supports one of the Commission's most critical statutory responsibilities, deterring and preventing price manipulation or any other disruptions to market integrity. Effective surveillance activities are crucial not only to protecting market participants and the public from price manipulation, but also to: Promoting market efficiency, competitiveness and financial integrity; protecting the futures markets' price discovery function; and promoting sound risk management practices.

In addition, the records that are subject to special call under these amendments are the type of basic transaction records that any foreign broker would create as a matter of sound business practices. Because these records would be created in any event, independently of any regulatory requirements, the rules impose no additional costs on foreign brokers in that area. There would be minimal costs associated with providing the records in answer to a special call, but such costs would be far outweighed by the benefits of protecting the markets and the public. Finally, with respect to the five-year record retention requirement that applies to these records, the cost of retaining the records will be minimal because Commission rules allow such records to be maintained electronically. Those minimal costs would, again, be far outweighed by the benefits of protecting the marketplace and the public.

The Commission has considered the costs and benefits of the amendments to Part 21 regarding special calls in light of the above-noted specific areas of concern identified in section 15. The Commission believes that the amended rules impose the minimum requirements necessary to enable it to perform its oversight functions and to carry out its mandate to protect the public interest in markets that are free of fraud, abuse and manipulation.

After considering these factors, the Commission has determined to adopt the rule amendments set forth below.

In the notice of proposed rulemaking, the Commission specifically invited

public comment on its application of the criteria contained in the Act. Commenters were also invited to submit any quantifiable data that they might have concerning the costs and benefits of the proposed rules with their comment letter. As noted above, no comments were received.

### III. Related Matters

#### A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The amendment to § 21.02 applies to FCMs, IBs, members of contract markets and foreign brokers. However, as noted above, the first three of these categories are already subject to substantial reporting and recordkeeping requirements under § 1.35 of the Commission's regulations. Among other things, that section requires FCMs, IBs and contract market members to maintain, and produce on request, the records that are also the subject of these rules. Therefore, as a practical matter, the rules impose new requirements only on foreign brokers (who are not subject to § 1.35).

With respect to such foreign brokers, the Commission recently published proposed rules to exempt from registration certain foreign persons (including foreign brokers).<sup>3</sup> In reviewing the applicability of the RFA to such foreign persons, the Commission noted that it has previously established certain definitions of "small entities" to be used in evaluating the impact of its regulations on such entities in accordance with the RFA.<sup>4</sup> The Commission has previously determined that FCMs are not small entities for purposes of the RFA because each FCM has an underlying fiduciary relationship with its customers, regardless of the size of the FCM.<sup>5</sup> The Commission notes that the foreign brokers affected by these amendments to the Commission's regulations would be required to be registered as FCMs if not for certain exemptions provided in Commission regulations. As such, they would maintain a fiduciary relationship with customers similar to the relationship maintained by each registered FCM. Therefore, in this context foreign brokers, like FCMs, are not appropriately categorized as small entities. Accordingly, the Acting Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C.

605(b) that the rules will not have a significant economic impact on a substantial number of small entities.

#### B. Paperwork Reduction Act

These rules contain information collection requirements. As required by the Paperwork Reduction Act of 1995 ("PRA"),<sup>6</sup> the Commission submitted a copy of the rules to the Office of Management and Budget ("OMB") for its review.

The amended rules have been reviewed and approved by OMB pursuant to the PRA, under control number 3038-0009. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number. In the Notice of Proposed Rulemaking, the Commission estimated the paperwork burden that could be imposed by the amendments and solicited comments thereon.<sup>7</sup> No comments were received.

Copies of the information collection submission to OMB are available from the Commission Clearance Officer, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418-5160.

#### List of Subjects

Commodity futures, Commodity Futures Trading Commission.

■ In consideration of the foregoing, and pursuant to the authority in the Commodity Exchange Act, the Commission hereby amends Part 21 of Title 17 of the Code of Federal Regulations as follows:

#### PART 21—SPECIAL CALLS

■ 1. The authority section for Part 21 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 2a, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 12a, 19 and 21; 5 U.S.C. 552 and 552(b).

■ 2. Section 21.02 is amended by removing the word, "and," at the end of paragraph (f), by redesignating paragraph (g) as paragraph (i), and by adding new paragraphs (g) and (h).

The additions read as follows:

**§ 21.02 Special calls for information on open contracts in accounts carried or introduced by futures commission merchants, members of contract markets, introducing brokers, and foreign brokers.**

\* \* \* \* \*

(g) The total number of futures contracts exchanged for commodities or for derivatives positions;

(h) The total number of futures contracts against which delivery notices have been issued or received; and

\* \* \* \* \*

■ 3. Section 21.04 is added to read as follows:

#### **§ 21.04 Delegation of authority to the Director of the Division of Market Oversight.**

The Commission hereby delegates, until the Commission orders otherwise, to the Director of the Division of Market Oversight, or to the Director's delegates, the authority set forth in section 21.01 of this Part to make special calls for information on controlled accounts from futures commission merchants and from introducing brokers and the authority set forth in section 21.02 of this Part to make special calls for information on open contracts in accounts carried or introduced by futures commission merchants, members of contract markets, introducing brokers, and foreign brokers. The Director may submit to the Commission for its consideration any matter that has been delegated pursuant to this section. Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated in this section to the Director.

Issued in Washington, DC, on August 23, 2007, by the Commission.

**David Stawick,**

*Secretary of the Commission.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 53 and 54

[TD 9334]

RIN 1545-BG95

#### **Requirement of Return and Time for Filing; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction notice.

**SUMMARY:** This document contains a correction to final and temporary regulations (TD 9334) that were published in the **Federal Register** on Friday, July 6, 2007 (72 FR 36871) providing guidance relating to the requirement of a return to accompany payment of excise taxes under section 4965 of the Internal Revenue Code and the time for filing that return.

**DATES:** The correction is effective August 31, 2007.

<sup>3</sup> 72 FR 15673 (April 2, 2007).

<sup>4</sup> 47 FR 18618, at 18621 (April 30, 1982).

<sup>5</sup> *Id.* at 18619.

<sup>6</sup> Pub. L. 104-13 (May 13, 1995).

<sup>7</sup> 72 FR 34417 (June 22, 2007).