

## Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**2005-20-05 Boeing:** Amendment 39-14298. Docket No. FAA-2005-21170; Directorate Identifier 2002-NM-124-AD.

#### Effective Date

- (a) This AD becomes effective October 31, 2005.

#### Affected ADs

- (b) None.

#### Applicability

- (c) This AD applies to Boeing Model 767-200 and 767-300 series airplanes equipped with center overhead stowage bin modules, certificated in any category; as identified in Boeing Special Attention Service Bulletin 767-25-0320, dated April 11, 2002.

## Unsafe Condition

(d) This AD results from tests conducted by the airplane manufacturer. We are issuing this AD to prevent failure of the attachment of the 9.0g (gravitational acceleration) tie rods to the center overhead stowage bin modules. This failure could result in collapse of those stowage bin modules, and consequent injury to passengers and crew and interference with their ability to evacuate the airplane in an emergency.

## Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

## Inspection to Determine I-beam Part Number (P/N)

(f) Within 36 months after the effective date of this AD: Perform a general visual inspection of the center overhead stowage bin modules to determine the P/N of each I-beam and to determine the configuration of each center overhead stowage bin module. Do the inspection in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767-25-0320, dated April 11, 2002.

**Note 1:** For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop light and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(g) For any I-beam found having P/N 412T2040-29 during the inspection required by paragraph (f) of this AD: No further action is required by this AD for that I-beam only.

## Support Strap Installation

(h) For any I-beam found having a P/N other than P/N 412T2040-29 during the inspection required by paragraph (f) of this AD: Before further flight, do the actions in paragraph (h)(1) or (h)(2) of this AD, as applicable, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767-25-0320, dated April 11, 2002.

(1) If the forward-most stowage bin module was inspected: Before further flight, install support straps having P/N 412T2043-101 and 412T2043-102 on the center overhead stowage bin module, in accordance with Figures 3, 4, and 5 of the Accomplishment Instructions of the service bulletin.

(2) If the stowage bin module inspected was other than the forward-most stowage bin module: Before further flight, do the actions specified in paragraph (h)(2)(i) or (h)(2)(ii) of this AD, as applicable.

(i) For center overhead stowage bin modules having "Configuration A," as specified in the service bulletin: Before

further flight, do the actions specified in paragraph (h)(1) of this AD.

(ii) For center overhead stowage bin modules having a configuration other than "Configuration A," as specified in the service bulletin: Before further flight, install two support straps having P/N 412T2043-119 on the center overhead stowage bin module, in accordance with Figures 3, 4, and 6 of the Accomplishment Instructions of the service bulletin.

## Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

## Material Incorporated by Reference

(j) You must use Boeing Special Attention Service Bulletin 767-25-0320, dated April 11, 2002, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, Nassif Building, Washington, DC; on the Internet at <http://dms.dot.gov>; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741-6030, or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on September 12, 2005.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05-19227 Filed 9-28-05; 8:45 am]

**BILLING CODE 4910-13-P**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 1

### Fees for Reviews of the Rule Enforcement Programs of Contract Markets and Registered Futures Association

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Establish the FY 2005 schedule of fees.

**SUMMARY:** The Commission charges fees to designated contract markets and the National Futures Association (NFA) to recover the costs incurred by the Commission in the operation of a program which provides a service to these entities. The fees are charged for the Commission's conduct of its program of oversight of self-regulatory rule enforcement programs (NFA and the contract markets are referred to as SROs).

The calculation of the fee amounts to be charged for FY 2005 is based on an average of actual program costs incurred during FY 2002, 2003, and 2004, as explained below. The FY 2005 fee schedule is set forth in the **SUPPLEMENTARY INFORMATION.** Electronic payment of fees is required.

**EFFECTIVE DATES:** The FY 2005 fees for Commission oversight of each SRO rule enforcement program must be paid by each of the named SROs in the amount specified by no later than November 28, 2005.

**FOR FURTHER INFORMATION CONTACT:** Stacy Dean Yochum, Counsel to the Executive Director, Commodity Futures Trading Commission, (202) 418-5160, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. For information on electronic payment, contact Stella Lewis, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, (202) 418-5186.

**SUPPLEMENTARY INFORMATION:**

**I. General**

This notice relates to fees for the Commission's review of the rule enforcement programs at the registered futures associations and contract markets regulated by the Commission.

**II. Schedule of Fees**

Fees for the Commission's review of the rule enforcement programs at the registered futures associations and contract markets regulated by the Commission:

| Entity                             | Fee amount |
|------------------------------------|------------|
| Chicago Board of Trade .....       | \$5,127    |
| Chicago Mercantile Exchange .....  | 256,683    |
| Kansas City Board of Trade         | 13,859     |
| New York Mercantile Exchange ..... | 125,378    |
| Minneapolis Grain Exchange         | 12,691     |

| Entity                       | Fee amount |
|------------------------------|------------|
| National Futures Association | 33,692     |
| New York Board of Trade .... | 36,245     |
| OneChicago .....             | 3,207      |
| Total .....                  | 486,882    |

**III. Background Information**

*A. General*

The Commission recalculates the fees charged each year with the intention of recovering the costs of operating this Commission program.<sup>1</sup> All costs are accounted for by the Commission's Management Accounting Structure Codes (MASC) system, which records each employee's time for each pay period. The fees are set each year based on direct program costs, plus an overhead factor.

*B. Overhead Rate*

The fees charged by the Commission to the SROs are designed to recover program costs, including direct labor costs and overhead. The overhead rate is calculated by dividing total Commission-wide overhead direct program labor costs into the total amount of the Commission-wide overhead pool. For this purpose, direct program labor costs are the salary costs of personnel working in all Commission programs. Overhead costs consist generally of the following Commission-wide costs; indirect personnel costs (leave and benefits), rent, communications, contract services, utilities, equipment, and supplies. This formula has resulted in the following overhead rates for the most recent three years (rounded to the nearest whole percent): 129 percent for fiscal year 2002, 113 percent for fiscal year 2003, and 109 percent for fiscal year 2004. These overhead rates are applied to the direct labor costs to calculate the costs of oversight of SRO rule enforcement programs.

*C. Conduct of SRO Rule Enforcement Reviews*

Under the formula adopted in 1993 (58 FR 42463, Aug. 11, 1993), which appears at 17 CFR part 1 appendix B,

<sup>1</sup> See Section 237 of the Futures Trading Act of 1982, 7 USC 16a and 31 USC 9701. For a broader discussion of the history of Commission Fees, see 52 FR 46070 (Dec. 4, 1987).

the Commission calculates the fee to recover the costs of its review of rule enforcement programs, based on the three-year average of the actual cost of performing reviews at each SRO. The cost of operation of the Commission's program of SRO oversight varies from SRO to SRO, according to the size and complexity of each SRO's program. The three-year averaging is intended to smooth out year-to-year variations in cost. Timing of review may affect costs—a review may span two fiscal years and fiscal years and reviews are not conducted at each SRO each year. Adjustments to actual costs may be made to relieve the burden on an SRO with a disproportionately large share of program costs.

The Commission's formula provides for a reduction in the assessed fee if an SRO has a smaller percentage of United States industry contract volume than its percentage of overall Commission oversight program costs. This adjustment reduces the costs so that as a percentage of total Commission SRO oversight program costs, they are in line with the pro rata percentage for that SRO of United States industry-wide contract volume.

The calculation made is as follows: The fee required to be paid to the Commission by each contract market is equal to the lesser of actual costs based on the three-year historical average of costs for that contract market or one-half of average costs incurred by the Commission for each contract market for the most recent three years, plus a pro rata share (based on average trading volume for the most recent three years) of the aggregate of average annual costs of all contract markets for the most recent three years. The formula for calculating the second factor is:  $0.5a + 0.5vt = \text{current fee}$ . In this formula, "a" equals the average annual costs, "v" equals the percentage of total volume across exchanges over the last three years, and "t" equals the average annual costs for all exchanges. NFA, the only registered futures association regulated by the Commission, has no contracts traded; hence its fee is based simply on costs for the most recent three fiscal years.

This table summarizes the data used in the calculations and the resulting fee for each entity:

|                                    | Three-year average actual costs | Three-year percentage of volume | Average year 2005 fee |
|------------------------------------|---------------------------------|---------------------------------|-----------------------|
| Chicago Board of Trade .....       | \$5,127                         | 33.4148                         | \$5,127               |
| Chicago Mercantile Exchange .....  | 256,683                         | 51.6763                         | 256,683               |
| New York Mercantile Exchange ..... | 186,234                         | 11.4811                         | 125,378               |
| New York Board of Trade .....      | 61,296                          | 1.9919                          | 36,245                |
| Kansas City Board of Trade .....   | 22,034                          | 1.0113                          | 13,859                |
| Minneapolis Grain Exchange .....   | 24,591                          | 0.1409                          | 12,691                |
| OneChicago .....                   | 6,011                           | 0.0718                          | 3,207                 |
| Subtotal .....                     | 561,977                         | 99.7881                         | 453,190               |
| National Futures Association ..... | 33,692                          | N/A                             | 33,692                |
| Total .....                        | 589,657                         | 99.7881                         | 486,882               |

An example of how the fee is calculated for one exchange, the Minneapolis Grain Exchange, is set forth here:

a. Actual three-year average costs equal \$24,591

b. The alternative computation is:  
 $(.5) (\$24,591) + (.5) (.001409) (\$561,977) = \$12,691.$

c. The fee is the less of a or b; in this case \$12,691.

As noted above, the alternative calculation based on contracts traded is not applicable to the NFA because it is not a contract market and has no contracts traded. The Commission's average annual cost for conducting oversight review of the NFA rule enforcement program during fiscal year 2002 through 2004 was \$33,692 (one-third of \$101,076). The fee to be paid by the NFA for the current fiscal year is \$33,692.

#### Payment Method

The Debt Collection Improvement Act (DCIA) requires deposits of fees owed to the government by electronic transfer of funds (See 31 U.S.C. 3720). For information about electronic payments, please contact Stella Lewis at (202) 418-5186 or [slewis@cftc.gov](mailto:slewis@cftc.gov), or see the CFTC Web site at <http://www.cftc.gov>, specifically <http://www.cftc.gov/cftc/cftcelectronicpayments.htm>.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, requires agencies to consider the impact of the rules on small business. The fees implemented in this release affect contract markets (also referred to as exchanges) and registered futures associations. The Commission has previously determined that contract markets and registered futures associations are not "small entities" for purposes of the Regulatory Flexibility Act. Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to 5 USC 605(b) that the fees implemented here will not have

a significant economic impact on a substantial number of small entities.

Issued in Washington, DC on September 23, 2005, by the Commission.

**Edward W. Colbert,**

*Deputy Secretary of the Commission.*

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**BILLING CODE 6351-01-M**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 210, 228, 229, 240 and 249

[Release Nos. 33-8618; 34-52492; File Nos. S7-40-02; S7-06-03]

**RIN 3235-AI66 and 3235-AI79**

### Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports of Companies That Are Not Accelerated Filers

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; extension of compliance dates; request for comment.

**SUMMARY:** We are extending the compliance dates that were published on March 8, 2005, in Release No. 33-8545 [70 FR 11528], for companies that are not accelerated filers, for certain amendments to Rules 13a-15 and 15d-15 under the Securities Exchange Act of 1934, Items 308(a) and (b) of Regulations S-K and S-B, Item 15 of Form 20-F and General Instruction B of Form 40-F. These amendments require companies, other than registered investment companies, to include in their annual reports a report of management and accompanying auditor's report on the company's internal control over financial reporting. The amendments also require management to evaluate, as of the end of each fiscal period, any change in the company's internal control over

financial reporting that occurred during the period that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting. We are also extending the compliance dates applicable to companies that are not accelerated filers for amendments to certain representations that must be included in the certifications required by Exchange Act Rules 13a-14 and 15d-14 regarding a company's internal control over financial reporting. Finally, we are soliciting comment about the implementation of these rules.

**DATES:** *Effective Date:* The effective date published on June 18, 2003, in Release No. 33-8238 [68 FR 36636] remains August 14, 2003. The effective date of this document is September 29, 2005.

*Comment Date:* Comments should be received on or before October 31, 2005.

*Compliance Dates:* The compliance dates are extended as follows: A company that is not an accelerated filer must begin to comply with these requirements for its first fiscal year ending on or after July 15, 2007. Companies must begin to comply with the provisions of Exchange Act Rule 13a-(d) or 15d-(d), whichever applies, requiring an evaluation of changes to internal control over financial reporting requirements with respect to the company's first periodic report due after the first annual report that must include management's report on internal control over financial reporting.

In addition, during the extended compliance period, a company that is not an accelerated filer may continue to omit the amended portion of the introductory language in paragraph 4 of the certification required by Exchange Act Rules 13a-14(a) and 15d-14(a) that refers to the certifying officers' responsibility for establishing and maintaining internal control over financial reporting for the company, as well as paragraph 4(b). This language, however, must be provided in the first annual report required to contain