(f) For all models of the Boeing 737, the flight cycle implementation time is 60,00 flights.

(g) For all models of the Boeing 747, the flight cycle implementation time is 15,000 flights.

(h) For all models of the McDonnell Douglas DC–8, the flight cycle implementation time is 30,000 flights.

(i) For all models of the McDonnell Douglas DC–9/MD–80, the flight cycle implementation time is 60,000 flights.

(j) For all models of the McDonnell Douglas DC–10, the flight cycle implementation time is 30,000 flights.

(k) For all models of the Lockheed L–1011, the flight cycle implementation time is 27,000 flights.

(l) For the Fokker F–28 Mark 1000, 2000, 3000, and 4000, the flight cycle implementation time is 60,00 flights.

Issued in Washington, DC, on April 19, 2000.

Jane F. Garvey,

Administrator of Federal Aviation Administration (FAA).

[FR Doc. 00–10220 Filed 4–24–00; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AB34

Commodity Pool Operators; Exclusion for Certain Otherwise Regulated Persons From the Definition of the Term ''Commodity Pool Operator''

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission''or ''CFTC'') is adopting Rule 4.5(a)(4)(v), which adds a plan defined as a church plan in Section 3(33) of Title I of the Employee Retirement Income Security Act of 1974 (''ERISA'') [1] (''Church Plan'') to the types of employee benefit plans that Rule 4.5(a)(4) currently provides shall not be construed to be commodity pools. The CFTC also is adopting conforming amendments to Rule 4.5(a)(4).

EFFECTIVE DATE: April 25, 2000.

FOR FURTHER INFORMATION CONTACT: Barbara S. Gold, Assistant Chief Counsel, or Christopher W. Cummings, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5450.

SUPPLEMENTARY INFORMATION: On March 1, 2000 the Commission published for comment proposed amendments to Rule 4.5(a)(4)(the ''Proposal''.[2] The sole substantive amendment the Commission proposed was to add a plan defined as a church plan in section 3(33) of the Employee Retirement Income Security Act of 1974 (''ERISA'') to the types of employee benefit plans that the rule provided shall not be construed to be commodity pools. This was proposed to be accomplished by adding a new paragraph (a)(4)(v) to the rule. In proposing this action, the Commission discussed generally the history of Rule 4.5,[3] it noted that Congress had exempted Church Plans from coverage under Titles I and IV of ERISA [4] ''to avoid excessive Government entanglement with religion in violation of the First Amendment to the Constitution'' [5] and it further noted that more recently, in connection with the adoption of the National Securities Markets Improvement Act of 1996 (''NSMIA''),[6] Congress provided that Church Plans are not investment companies under the Investment Company Act of 1940 and therefore that they are not subject to registration as such.[7]

The various technical amendments the Commission proposed to Rule 4.5(a)(4) were to conform the punctuation of the rule and to accommodate grammatically proposed paragraph 4.5(a)(4)(v). The Commission did not propose to change the text of any of the paragraphs Rule 4.5(a)(4)(i)–(iv).

The Commission specifically requested comment on two aspects of the proposal. As the Commission stated:

> The proposal would be broader than the [commodity pool operator (''CPO'')] registration no-action positions that its staff previously has issued to the operators of Church Plans.[8] Also, under this proposal the operators of Church Plans would not need to file a Notice of Eligibility to claim relief and they would not need to restrict their Plans' activities to the operating criteria of Rule 4.5(c). The Commission believes the breadth of its proposal is appropriate in light of Congress' rationale in excluding Church Plans from coverage under Titles I and IV of ERISA. The Commission nonetheless requests comment on whether rather than adding Church Plans to the list of plans that should not be construed to be a pool as proposed, the Commission should include the operator of a Church Plan as an eligible person who may claim an exclusion from the CPO definition. The Commission also requests comment on whether relief under Rule 4.5 should be available solely to those Church Plans that have not made an election under Section 410(d) of the Internal Revenue Code [''IRC''] to be subject to certain provision of ERISA.[9]

The Commission received two comment letters on the Proposal. Neither of the letters the Commission received on the proposed amendments to Rule 4.5(a)(4) addressed specifically the two issues on which the Commission had requested comment. One letter, from counsel to a Church Plan, expressed strong approval of the Proposal. The letter also stated that an additional support for the Proposal's adoption is that the rights of Church Plan participants are fully protected by the exclusive benefits requirements imposed on Church Plans by the IRC. The other letter, from a member of the commodities bar, asked the Commission to adopt a policy and implementing regulations to the effect that ''a collective investment vehicle using commodity interests solely for recognized risk management purposes is not 'commodity pool' within the intent of the [commodity pool operator] definition in section 1a(4) of the Commodity Exchange Act.'' While this comment is outside the scope of this

[1] 29 U.S.C. 1002(33) (1994).

[2] 65 FR 10939, corrected at 65 FR 12318 (March 8, 2000).

[3] See 65 FR 10939 at 10940–41.

[4] 29 U.S.C. 1001 (1994 and Supp. III 1997) and 1301 (1994), respectively.

[5] See 65 FR 10939 at 10941–42.

[6] Pub. L. No. 104–290, 110 Stat. 3416 (1996).

[7] See 65 FR 10939 at 10942. This exemption has been codified at 15 U.S.C. 80a–3(c)(14) (Supp II 1996).

[8] In its footnote to this statement, the Commission explained that:

> If a collective investment vehicle (such as a Church Plan) is not a commodity pool, the operator of the vehicle would not be a CPO. The operator would nonetheless be a person for all other purposes of the [Commodity Exchange Act (''Act'')] and CFTC rules—*e.g.*, it would be subject to the general antifraud provisions of section 4b of the Act, 7 U.S.C. 6b(1994), and to the large trader reporting requirements of Part 18 of the regulations. If a collective investment vehicle is a pool, in addition to being a person for the purposes of the Act and the rules, its operator would be a CPO subject to all provisions of the Act and Commission rules applicable to CPOs regardless of registration status—*e.g.*, to the special antifraud provisions for CPOs (and [commodity trading advisors (''CTAs'')] in section 4o of the Act, 7 U.S.C. 6o (1994), the operational requirements for CPOs in Rule 4.20 and the advertising requirements for CPOs (and CTAs) in Rule 4.41.
>
> In this regard, the Commission wishes to emphasize that the status of a collective investment vehicle as a pool or a ''non-pool'' does not affect the registration or Part 4 requirements of any CTA to the vehicle. But see Rule 4.14(a)(8), which makes available an exemption from CTA registration to certain registered investment advisers who, among other things, provide commodity interest trading advice to Rule 4.5 trading vehicles in a manner solely incidental to their business of providing securities advice to those vehicles. 65 FR 10939 at 10942, n.26.

[9] 65 FR 10939 at 10942.

rulemaking, the Commission does intend to consider this issue in the near future.

In light of the comments received, the Commission is adopting the amendments to Rule 4.5(a)(4) as proposed.

III. Related Matters

A. Paperwork Reduction Act

When publishing proposed rules, the Paperwork Reduction Act of 1995 (''PRA'') [10] imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously has submitted Rule 4.5 in proposed form and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget has approved the collection of information of which this proposed rule is a part through September 30, 2001, OMB Control Number 3038–0005: Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants. While this proposed rule has no burden, the group of rules (3038–0005) of which it is a part has the following burden:

Average Burden Hours Per Response: 7.49.

Number of Respondents: 6,949.

Frequency of Response: Monthly, Quarterly, Annually, On Occasion.

Copies of the OMB approved information collection package associated with this rule are available from the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC, 20503, (202) 395–7340.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') [11] requires each federal agency to consider in the course of proposing substantive rules the effect of those rules on small entities. The definitions of small entities that the Commission has established for this purpose do not address the persons and qualifying entities set forth in Rule 4.5 because, by the very nature of the rule, the operations and activities of such persons and entities generally are regulated by Federal and State authorities other than the Commission. Assuming, arguendo, that Church Plans would be small entities for purposes of the RFA, the Commission believes that the amendment to Rule 4.5(a)(4) would not have a significant economic impact on them because it would not require the filing of a notice containing specified operating criteria with the Commission to claim the relief available under the rule. Moreover, the Commission notes that the amendment potentially would relieve a greater number of persons (*i.e.,* the operators of Church Plans) from the requirement to register as a CPO and from the disclosure, reporting and recordkeeping requirements applicable to registered CPOs.

Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to Section 3(a) of the RFA [12] that amended Rule 4.5(a)(4) will not have a significant economic impact on a substantial number of small entities.

C. Administrative Procedure Act.

The Administrative Procedure Act provides that the required publication of a substantive rule shall be made not less than 30 days before its effective date, but provides an exception for ''a substantive rule which grants or recognizes an exemption or relieves a restriction.'' [13] Because Rule 4.5(a)(4)(v) provides that Church Plans shall not be construed to be pools, the operators of Church Plans are not CPOs and they are not subject to regulation as CPOs under the Act. Accordingly, the Commission has determined to make the proposed amendments to Rule 4.5 effective immediately.

List of Subjects in 17 CFR Part 4

Commodity pool operators, Commodity futures.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 1a(4), 4k, 4*l*, 4m, 4n, 4*o* and 8a, 7 U.S.C. 1a(4), 6k, 6*l*, 6m, 6n, 6*o* and 12a, the Commodity Futures Trading Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for Part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12a and 23.

2. In § 4.5, in paragraph (a)(4) introductory text, the proviso text is republished and paragraph (a)(4) is amended by removing the word ''and'' at the end of paragraph (a)(4)(ii), by removing the period and adding a semicolon at the end of paragraph (a)(4)(iii), by removing the period at the end of paragraph (a)(4)(iv) and adding ''; and'' in its place, and by adding paragraph (a)(4)(v) to read as follows:

§ 4.5 Exclusion for certain otherwise regulated persons from the definition of the term ''commodity pool operator.''

(a) * * *

(4) * * * *Provided, however,* That for purposes of this § 4.5 the following employee benefit plans shall be construed to be pools:

* * * * *

(v) A plan defined as a church plan in Section 3(33) of title I of the Employee Retirement Income Security Act of 1974 with respect to which no election has been made under 26 U.S.C. 410(d).

* * * * *

Issued in Washington, D.C. on April 18, 2000, by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

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[10] 44 U.S.C. 3501 *et seq.* (Supp. II 1996).

[11] 5 U.S.C. 601 *et seq.* (1994 and Supp. II 1996).

[12] 5 U.S.C. 605(b) (1994).

[13] 5 U.S.C. 553(d) (1994).

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2201

Regulations Implementing the Electronic Freedom of Information Act

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Interim final rule.

SUMMARY: The Occupational Safety and Health Review Commission is revising its Freedom of Information Act (FOIA) regulations to conform with the Electronic Freedom of Information Act Amendments of 1996 (EFOIA). The EFOIA specifies how the FOIA applies to records maintained in hard copy or electronic format. The rule implements statutory provisions that broaden public access to government information by making more records available in electronic format. The rule implements provisions that recognize the difficulty in responding to requests in the 10 working days formerly required and extends that time to 20 working days. It also provides procedures for discussing with FOIA requesters ways of tailoring requests to improve responsiveness. This interim rule amends the Review Commission's FOIA regulations to comply with the requirements of the new statute. Certain other changes have