



# Federal Register

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**Monday,  
June 28, 2004**

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**Part XLVI**

## **Commodity Futures Trading Commission**

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**Semiannual Regulatory Agenda**

COMMODITY FUTURES TRADING COMMISSION (CFTC)

COMMODITY FUTURES TRADING COMMISSION

17 CFR Ch. I

Regulatory Flexibility Agenda

AGENCY: Commodity Futures Trading Commission.

ACTION: Semiannual regulatory agenda.

**SUMMARY:** The Commodity Futures Trading Commission, in accordance with the requirements of the Regulatory Flexibility Act, is publishing a semiannual agenda of significant rules that the Commission expects to propose or promulgate over the next year. The Commission welcomes comments from small entities and others on the agenda.

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**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (RFA), sets forth a number of requirements for agency rulemaking. Among other things, the RFA requires that:

Semiannually, each agency shall publish in the **Federal Register** a regulatory flexibility agenda that shall contain:

(1) A brief description of the subject area of any rule that the agency expects to propose or promulgate, which is likely to have a significant economic impact on a substantial number of small entities;

(2) A summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking; and

(3) The name and telephone number of an agency official knowledgeable about the items listed in paragraph (1). 5 U.S.C. 602(a).

The Commission has prepared an agenda of significant rules that it presently expects may be considered during the course of the next year. These rules may have some impact on small entities.<sup>1</sup> In this regard, section 602(d) of the RFA, 5 U.S.C. 602(d), provides: "Nothing in [section 602] precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda or requires an agency to consider or act on any matter listed in such agenda."

The Commission's spring 2004 regulatory flexibility agenda is set forth below.

Issued in Washington, DC on May 7, 2004, by the Commission.

**Jean A. Webb,**  
*Secretary of the Commission.*

Commodity Futures Trading Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3846	Offering and Selling Security Futures Products Traded on Foreign Boards of Trade to United States Persons; Requirements for Foreign Stock Index Contracts To Qualify as Non-Narrow-Based Indices .....	3038-AB75
3847	Interagency Proposal To Consider Alternative Forms of Privacy Notices Under the Gramm-Leach-Bliley Act .....	3038-AC04
3848	Haircuts on Foreign Currency .....	3038-AC05
3849	Execution of Off-Centralized Market Transactions: Regulation 1.38 and Guidance on Core Principle 9 .....	3038-AC07

Commodity Futures Trading Commission—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3850	Registration Exemptions Pertaining to the Offer and Sale of Foreign Futures and Foreign Options Contracts to Customers Located in the United States .....	3038-AB45
3851	Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers .....	3038-AB64
3852	Information Access and Price Transparency For Exempt Commercial Markets .....	3038-AC02
3853	Collection of Claims Owed the United States Arising from Activities Under the Commission's Jurisdiction .....	3038-AC03
3854	Reporting Levels and Trades Involving the Exchange of Futures .....	3038-AC08

<sup>1</sup> The Commission published its definition of small entity to be used in connection with rulemaking proceedings on April 30, 1982 (47 FR 18618). Pursuant to that definition, the Commission is not required to list many of the agenda items contained in this regulatory flexibility agenda. See 5 U.S.C. 602(a)(1). Moreover, the Commission has previously certified, pursuant to section 605 of the RFA, 5 U.S.C. 605, that certain items contained in this agenda will not have a significant economic

impact on a substantial number of small entities. Accordingly, the listing of a rule in this regulatory flexibility agenda should not, in any event, be taken as a determination that a rule, when proposed or promulgated, will in fact require a regulatory flexibility analysis. However, the Commission hopes that the publication of an agenda that includes significant rules, regardless of their potential impact on small entities, may serve the public generally by providing an early and

meaningful opportunity to participate in and comment on the formulation of new or revised regulations. In addition to publishing the regulatory flexibility agenda, the Commission also makes available to the public, on a monthly basis, a calendar and, on a weekly basis, posts an advisory on its website (<http://www.cftc.gov>) that lists rules that the Commission is considering or will consider in the near future.

CFTC

Commodity Futures Trading Commission—Completed Actions

Sequence Number	Title	Regulation Identifier Number
3855	Regulation of Hybrid Instruments .....	3038-AB69
3856	Use of Broker-Dealers, Depository Institutions, and Farm Crediting System Institutions as Intermediaries on Derivatives Transaction Execution Facilities .....	3038-AB70
3857	Investment of Customer Funds .....	3038-AC01

Commodity Futures Trading Commission (CFTC)

Proposed Rule Stage

**3846. OFFERING AND SELLING SECURITY FUTURES PRODUCTS TRADED ON FOREIGN BOARDS OF TRADE TO UNITED STATES PERSONS; REQUIREMENTS FOR FOREIGN STOCK INDEX CONTRACTS TO QUALIFY AS NON-NARROW-BASED INDICES**

**Priority:** Substantive, Nonsignificant  
**Legal Authority:** 7 USC 1 et seq, as amended by PL 106-554, 114 Stat 2763  
**CFR Citation:** Not Yet Determined

**Legal Deadline:** Other, Statutory, December 21, 2001, Within one year after the date of enactment of the Commodity Futures Modernization Act of 2000.

**Abstract:** The Commission and the Securities and Exchange Commission are required to jointly issue (1) rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of security futures products traded on or subject to the rules of a foreign board of trade to United States persons, and (2) rules and regulations that set forth the requirements for foreign stock index contracts to qualify as non-narrow-based indices.

**Timetable:**

Action	Date	FR Cite
NPRM	07/00/04	

**Regulatory Flexibility Analysis**

**Required:** No

**Government Levels Affected:** None

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**Related RIN:** Related to 3038-AB78  
**RIN:** 3038-AB75

**3847. INTERAGENCY PROPOSAL TO CONSIDER ALTERNATIVE FORMS OF PRIVACY NOTICES UNDER THE GRAMM-LEACH-BLILEY ACT**

**Priority:** Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

**Legal Authority:** 7 USC 7b-2; 7 USC 12a(5); 15 USC 6801 et seq

**CFR Citation:** 17 CFR 160

**Legal Deadline:** None

**Abstract:** Subtitle A of the Gramm-Leach-Bliley Act (GLB Act), captioned Disclosure of Nonpublic Personal Information (15 U.S.C. 6801 et seq.), requires each financial institution to provide a notice of its privacy policies and practices to its consumer customers. In general, the privacy notices must describe a financial institution's policies and practices with respect to disclosing nonpublic personal information about a consumer to both affiliated and nonaffiliated third parties, and provide a consumer a reasonable opportunity to direct the institution not to share nonpublic personal information about the consumer with nonaffiliated third parties. The GLB Act agencies, including the CFTC, have published substantially identical regulations to implement GLB title V, known

collectively as the "privacy rule." Many notices issued under the privacy rule were long and complex, and difficult to compare with each other. Consequently, GLB Act agencies are considering whether to amend the privacy rule to provide for simpler, more useful notices. The GLB Act agencies intend to issue an advance notice of proposed rulemaking to determine whether to propose changes to the privacy rule, and if so, will seek further public comment on specific programs. The agencies expect that consumer testing would be a key component in the development of any specific proposals.

**Timetable:**

Action	Date	FR Cite
ANPRM	12/30/03	68 FR 75164
ANPRM Comment Period End	03/29/04	
NPRM	09/00/04	

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** Businesses

**Government Levels Affected:** Federal

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**RIN:** 3038-AC04

CFTC

Proposed Rule Stage

**3848. HAIRCUTS ON FOREIGN CURRENCY**

**Priority:** Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

**Legal Authority:** 7 USC 6f(b)

**CFR Citation:** 17 CFR 1.17

**Legal Deadline:** None

**Abstract:** The Commission is proposing to amend regulations that specify required capital charges, or exclusions from net capital, to be deducted by futures commission merchants (FCMs) and introducing brokers (IBs) when computing their adjusted net capital. For forward contracts that are not covered by an open futures contract or commodity option, and are in specified foreign currencies (British pounds, Canadian dollars, Japanese yen, Swiss francs, or the Euro), the proposed amendment would apply a capital charge of six percent of the market value of the FCM's or IB's uncovered forward contracts in these currencies. Uncovered forwards in any other non-U.S. currency would remain subject to the 20 percent capital charge currently set forth in the Commission's regulations.

**Timetable:**

Action	Date	FR Cite
NPRM	07/00/04	

**Action Date FR Cite**

NPRM Comment 09/00/04  
Period End

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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**RIN:** 3038-AC05

**3849. EXECUTION OF OFF-CENTRALIZED MARKET TRANSACTIONS: REGULATION 1.38 AND GUIDANCE ON CORE PRINCIPLE 9**

**Priority:** Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

**Legal Authority:** 7 USC 1 et seq, as amended by PL 106-554, 114 Stat 2763

**CFR Citation:** 17 CFR 1; 17 CFR 38

**Legal Deadline:** None

**Abstract:** Since the Commission originally promulgated Regulation 1.38,

the Commodity Futures Modernization Act of 2000 (CFMA) was signed into law. The CFMA, among other things, specifically expanded the allowable transactions that could be executed off the centralized market. The Commission is considering whether to propose amendments to its rules concerning trading off the centralized market, including the addition of guidance on contract market block trading rules, in light of further administrative experience with, and consideration of, the implications of the CFMA.

**Timetable:**

Action	Date	FR Cite
NPRM	07/00/04	

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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**RIN:** 3038-AC07

Commodity Futures Trading Commission (CFTC)

Final Rule Stage

**3850. REGISTRATION EXEMPTIONS PERTAINING TO THE OFFER AND SALE OF FOREIGN FUTURES AND FOREIGN OPTIONS CONTRACTS TO CUSTOMERS LOCATED IN THE UNITED STATES**

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 7 USC 2(a)(1)(A); 7 USC 6(b); 7 USC 6c

**CFR Citation:** 17 CFR 30.1; 17 CFR 30.4; 17 CFR 30.10

**Legal Deadline:** None

**Abstract:** The Commission proposes to codify some of the interpretations and positions that its staff has taken regarding registration requirements under part 30 of the Commission's rules, which governs, generally, the solicitation and sale of foreign futures and foreign options contracts to

customers located in the United States. 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 Rule 30.10 relief, if they carry only: (1) customer omnibus accounts for U.S. FCMs; (2) U.S. affiliate accounts that are proprietary to the foreign futures and options broker; or (3) U.S. accounts that are proprietary to a U.S. FCM. In addition, proposed Rule 30.10(a) will specify representations that must be made by a foreign futures and options broker that has U.S. bank branches in order to obtain a Rule 30.10 comparability exemption or to come within the registration exception of Rule 30.4.

**Timetable:**

Action	Date	FR Cite
NPRM	08/26/99	64 FR 46613
NPRM Comment Period End	10/25/99	
Second NPRM	04/06/04	69 FR 17998
Second NPRM Comment Period End	06/07/04	
Final Action	09/00/04	
Final Action Effective	10/00/04	

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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## CFTC

## Final Rule Stage

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RIN: 3038-AB45

### 3851. MINIMUM FINANCIAL REQUIREMENTS FOR FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 7 USC 6f

**CFR Citation:** 17 CFR 1.17

**Legal Deadline:** None

**Abstract:** The Commission intends to propose amendments to Rule 1.17 that would adopt a risk-based capital requirement for futures commission merchants.

#### Timetable:

Action	Date	FR Cite
NPRM	07/09/03	68 FR 40835
NPRM Comment Period End	09/08/03	
Final Action	07/00/04	
Final Action Effective	08/00/04	

#### Regulatory Flexibility Analysis

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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RIN: 3038-AB64

### 3852. INFORMATION ACCESS AND PRICE TRANSPARENCY FOR EXEMPT COMMERCIAL MARKETS

**Priority:** Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

**Legal Authority:** 7 USC 2(h)(3) to (5)

**CFR Citation:** 17 CFR 36.3

**Legal Deadline:** None

**Abstract:** The proposal would revise the rules on Commission access to information on transactions on electronic trading facilities operating as exempt commercial markets under the

Commodity Exchange Act to provide for access to more relevant and useful information. The proposed rules also would require such markets to publicly disseminate certain trading data if, as defined, they perform a significant price discovery function in the underlying cash market.

#### Timetable:

Action	Date	FR Cite
NPRM	11/25/03	68 FR 66032
NPRM Comment Period End	01/26/04	
Final Action	07/00/04	

#### Regulatory Flexibility Analysis

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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RIN: 3038-AC02

### 3853. COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION

**Priority:** Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

**Legal Authority:** 31 USC 3720D; 31 CFR 285.11

**CFR Citation:** 17 CFR 143

**Legal Deadline:** None

**Abstract:** Pursuant to the Debt Collection Improvement Act (DCIA) of 1996, the Department of the Treasury has promulgated regulations authorizing and governing the administrative garnishment of wages of persons, not employed by the Federal government, who owe claims to the United States. Under the DCIA and Treasury regulations, Federal agencies can promulgate rules allowing for the garnishment of such claims arising from actions within their jurisdiction. As a general matter, the individual agencies' rules must adopt, or otherwise conform to, the Treasury rules. To expedite the collection of claims arising from activity within its jurisdiction, the Commission is

amending its part 143 rules, governing debt collections, to provide for administrative wage garnishment.

#### Timetable:

Action	Date	FR Cite
NPRM	12/15/03	68 FR 69634
NPRM Comment Period End	01/14/04	
Final Action	07/00/04	

#### Regulatory Flexibility Analysis

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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RIN: 3038-AC03

### 3854. • REPORTING LEVELS AND TRADES INVOLVING THE EXCHANGE OF FUTURES

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 7 USC 1 et seq, as amended by PL 106-554, 114 Stat 2763

**CFR Citation:** 17 CFR 15 to 21

**Legal Deadline:** None

**Abstract:** The Commission is considering proposing rules to raise reporting levels, address the manner in which certain transactions are reported to the Commission, and amend the rules that establish current data transmission practices.

#### Timetable:

Action	Date	FR Cite
NPRM	05/12/04	69 FR 26333
NPRM Comment Period End	06/11/04	
Final Action	07/00/04	

#### Regulatory Flexibility Analysis

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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## CFTC

Final Rule Stage

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## Commodity Futures Trading Commission (CFTC)

Completed Actions

**3855. REGULATION OF HYBRID INSTRUMENTS****Priority:** Substantive, Nonsignificant**CFR Citation:** Not Yet Determined**Completed:**

Reason	Date	FR Cite
Withdrawn	04/20/04	

**Regulatory Flexibility Analysis****Required:** No**Small Entities Affected:** No**Government Levels Affected:** None

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**RIN:** 3038-AB69**3856. USE OF BROKER-DEALERS, DEPOSITORY INSTITUTIONS, AND FARM CREDITING SYSTEM INSTITUTIONS AS INTERMEDIARIES ON DERIVATIVES TRANSACTION EXECUTION FACILITIES****Priority:** Substantive, Nonsignificant**CFR Citation:** Not Yet Determined**Completed:**

Reason	Date	FR Cite
Withdrawn	04/29/04	

**Regulatory Flexibility Analysis****Required:** No**Government Levels Affected:** None

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**RIN:** 3038-AB70**3857. INVESTMENT OF CUSTOMER FUNDS****Priority:** Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.**CFR Citation:** 17 CFR 1.25**Completed:**

Reason	Date	FR Cite
Final Action	02/10/04	69 FR 6140
Final Action Effective	03/11/04	

**Regulatory Flexibility Analysis****Required:** No**Small Entities Affected:** No**Government Levels Affected:** None

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**RIN:** 3038-AC01

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