

**DATES:** Comments must be received by July 21, 2006.

**ADDRESSES:** The draft Prospectus is posted on the CCSP Program Office web site. The web addresses to access the draft Prospectus is:

Product 4.3 (Resources):

<http://www.climate-science.gov/Library/sap/sap4-3/default.htm>

Detailed instructions for making comments on the draft Prospectus is provided with the Prospectus. Comments should be prepared in accordance with these instructions.

**FOR FURTHER INFORMATION CONTACT:**

Vanessa Richardson, Climate Change Science Program Office, 1717 Pennsylvania Avenue NW., Suite 250, Washington, DC 20006, Telephone: (202) 419-3465.

**SUPPLEMENTARY INFORMATION:** The CCSP was established by the President in 2002 to coordinate and integrate scientific research on global change and climate change sponsored by 13 participating departments and agencies of the U.S. Government. The CCSP is charged with preparing information resources that support climate-related discussions and decisions, including scientific synthesis and assessment analyses that support evaluation of important policy issues. The Prospectus addressed by this notice provides a topical overview and describes plans for scoping, drafting, reviewing, producing, and disseminating one of 21 final synthesis and assessment Products that will be produced by the CCSP.

Dated: June 15, 2006.

**Conrad C. Lautenbacher, Jr.,**

*Vice Admiral, U.S. Navy (Ret.), Under Secretary of Commerce for Oceans and Atmosphere.*

[FR Doc. E6-9745 Filed 6-20-06; 8:45 am]

**BILLING CODE 3510-12-S**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

[Docket No. PTO-P-2006-0035]

#### Grant of Interim Extension of the Term of U.S. Patent No. 4,826,811; PolyHeme® (Acellular Red Blood Cell Substitute)

**AGENCY:** United States Patent and Trademark Office, DOC.

**ACTION:** Notice of interim patent term extension.

**SUMMARY:** The United States Patent and Trademark Office has issued a certificate under 35 U.S.C. 156(d)(5) for a fourth one-year interim extension of the term of U.S. Patent No. 4,826,811.

**FOR FURTHER INFORMATION CONTACT:**

Mary C. Till by telephone at (571) 272-7755; by mail marked to her attention and addressed to the Commissioner for Patents, Mail Stop Patent Ext., P.O. Box 1450, Alexandria, VA 22313-1450; by fax marked to her attention at (571) 273-7755, or by e-mail to [Mary.Till@uspto.gov](mailto:Mary.Till@uspto.gov).

**SUPPLEMENTARY INFORMATION:** Section

156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to a year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On May 31, 2006, patent owner, Northfield Laboratories Inc., timely filed an application under 35 U.S.C. 156(d)(5) for an interim extension of the term of U.S. Patent No. 4,826,811. The patent claims the human biological product PolyHeme® (acellular red blood cell substitute), a method of use of the biological product, and a method of manufacturing the biological product. The application indicates, and the Food and Drug Administration has confirmed, that an investigational new drug application for the human biological product PolyHeme® has been filed and is currently undergoing regulatory review before the Food and Drug Administration for permission to market or use the product commercially.

Review of the application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for an additional year as required by 35 U.S.C. 156(d)(5)(B). Because it is apparent that the regulatory review period will continue beyond the extended expiration date of the patent (June 20, 2006), interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

An interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 4,826,811 is granted for a period of one year from the extended expiration date of the patent, i.e., until June 20, 2007.

Dated: June 15, 2006.

**Jon W. Dudas,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. E6-9767 Filed 6-20-06; 8:45 am]

**BILLING CODE 3510-16-P**

## COMMODITY FUTURES TRADING COMMISSION

### Comprehensive Review of the Commitments of Traders Reporting Program

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Request for comments.

**SUMMARY:** The Commitments of Traders ("COT") reports are weekly reports, published by the Commodity Futures Trading Commission ("CFTC" or "Commission"), showing aggregate trader positions in certain futures and options markets. Over time, both the trading activity that is the subject of the COT reports, and the reports themselves, have continued to change and evolve. As part of its ongoing efforts both to maintain an information system that reflects changing market conditions, and to provide the public with useful information regarding futures and options markets, the Commission is undertaking a comprehensive review of the COT reporting program. This release is intended to: (1) Provide useful background information regarding the COT reports; (2) lay out various issues and questions regarding the COT reports; and (3) solicit public comment regarding the reports, including suggestions as to possible changes in the COT reporting system.

**DATES:** Responses must be received by August 21, 2006.

**ADDRESSES:** Written responses should be sent to Eileen Donovan, Acting Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Responses may also be submitted via e-mail at [secretary@cftc.gov](mailto:secretary@cftc.gov). "COT reports" must be in the subject field of responses submitted via e-mail, and clearly indicated in written submissions. This document is also available for comment at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Donald H. Heitman, Senior Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Telephone: 202-418-5041. E-mail: [dheitman@cftc.gov](mailto:dheitman@cftc.gov).

**SUPPLEMENTARY INFORMATION:**

## I. Background

### A. The COT Reports

The COT reports provide a breakdown of each Tuesday's open interest<sup>1</sup> for all futures and option markets in which 20 or more traders hold positions equal to or above the reporting levels<sup>2</sup> established by the CFTC. The weekly reports for *Futures-Only Commitments of Traders* and for *Futures-and-Options-Combined Commitments of Traders* are released every Friday at 3:30 p.m. Eastern time. Reports are available in both a short and long format. The short report shows open interest separately by reportable and nonreportable<sup>3</sup> positions. For reportable positions, additional data are provided for

<sup>1</sup> Open interest is the total of all futures and/or option contracts entered into and not yet offset by a transaction, by delivery, by exercise, etc. The aggregate of all long open interest is equal to the aggregate of all short open interest. Open interest held or controlled by a trader is referred to as that trader's position. For the *COT Futures & Options Combined* report, option open interest and traders' option positions are computed on a futures-equivalent basis using delta factors supplied by the exchanges. Long-call and short-put open interest are converted to long futures-equivalent open interest. Likewise, short-call and long-put open interest are converted to short futures-equivalent open interest. For example, a trader holding a long put position of 500 contracts with a delta factor of 0.50 is considered to be holding a short futures-equivalent position of 250 contracts. A trader's long and short futures-equivalent positions are added to the trader's long and short futures positions to give "combined-long" and "combined-short" positions. Open interest, as reported to the Commission and as used in the COT report, does not include open futures contracts against which notices of deliveries have been stopped by a trader or issued by the clearing organization of an exchange.

<sup>2</sup> Clearing members, futures commission merchants, and foreign brokers (collectively called "reporting firms") file daily reports with the Commission. Those reports show the futures and option positions of traders that hold positions above specific reporting levels set by CFTC regulations. These reporting levels range from 25 contracts for new or relatively small markets to 3,000 contracts for three-month Eurodollar time deposit rates (See 17 CFR 15.03). If, at the daily market close, a reporting firm has a trader with a position at or above the Commission's reporting level in any single futures month or option expiration, it reports that trader's entire position in all futures and options expiration months in that commodity, regardless of size. The aggregate of all traders' positions reported to the Commission usually represents 70 to 90 percent of the total open interest in any given market. From time to time, the Commission will raise or lower the reporting levels in specific markets to strike a balance between collecting sufficient information to oversee the markets and minimizing the reporting burden on the futures industry.

<sup>3</sup> The long and short open interest shown as "Nonreportable Positions" are derived by subtracting total long and short "Reportable Positions" from the total open interest. Accordingly, for "Nonreportable Positions," the number of traders involved and the commercial/non-commercial classification of each trader are unknown.

commercial and non-commercial holdings.

When an individual reportable trader is identified to the Commission, the trader is classified either as "commercial" or "non-commercial." All of a trader's reported futures positions in a commodity are classified as commercial if the trader uses futures contracts in that particular commodity for hedging as defined in the Commission's regulations (17 CFR 1.3(z)). A trading entity generally gets classified as a "commercial" by filing a statement with the Commission (on CFTC Form 40) that it is commercially " \* \* \* engaged in business activities hedged by the use of the futures or option markets." In order to ensure that traders are classified with accuracy and consistency, the Commission staff reviews this self-classification and may re-classify a trader if the staff has additional information about the trader's use of the markets. A trader may be classified as a commercial in some commodities and as a non-commercial in other commodities. A single trading entity cannot be classified as both a commercial and non-commercial in the same commodity. Nonetheless, a multi-functional organization that has more than one trading entity may have each trading entity classified separately in a commodity. For example, a financial organization trading in financial futures may have a banking entity whose positions are classified as commercial and have a separate money-management entity whose positions are classified as non-commercial.

The short report also provides additional data for reportable positions regarding spreading,<sup>4</sup> changes from the previous report,<sup>5</sup> percent of open interest by category,<sup>6</sup> and numbers of traders.<sup>7</sup> The long report, in addition to

<sup>4</sup> For the futures-only report, spreading measures the extent to which each non-commercial trader holds equal long and short futures positions. For the options-and-futures-combined report, spreading measures the extent to which each non-commercial trader holds equal combined-long and combined-short positions. For example, if a non-commercial trader in Eurodollar futures holds 5,000 long contracts and 4,500 short contracts, 500 contracts will appear in the "Long" category and 4,500 contracts will appear in the "Spreading" category. These figures do not include intermarket spreading (e.g., spreading Eurodollar futures against Treasury Note futures).

<sup>5</sup> Changes in commitments from the previous report represent the differences between the data for the current report date and the data published in the previous report.

<sup>6</sup> Percents are calculated against the total open interest for the futures-only report and against the total futures-equivalent open interest for the options-and-futures-combined report. Percents less than 0.05 are shown as 0.0, and the percents may not add to exactly 100.0 due to rounding.

<sup>7</sup> To determine the total number of reportable traders in a market, a trader is counted only once

the information in the short report, also groups the data by crop year,<sup>8</sup> where appropriate, and shows the concentration of positions held by the largest four and eight reportable traders, without regard to whether they are classified as commercial or non-commercial. Current COT data are available on the internet at the Commission's Web site, <http://www.cftc.gov>.<sup>9</sup>

### B. Evolution of the COT Reports and the Marketplace

The COT reports can trace their antecedents all the way back to 1924. In that year, the U.S. Department of Agriculture's ("USDA") Grain Futures Administration, predecessor of the USDA's Commodity Exchange Authority, which is in turn the predecessor of the Commission, published its first comprehensive annual report. The report was published pursuant to the provisions of the Grain Futures Act of 1922,<sup>10</sup> the predecessor statute of today's Commodity Exchange Act ("CEA" or "the Act"), which was enacted in 1936.<sup>11</sup>

The Grain Futures Administration noted that the general objectives of the Grain Futures Act included "[t]o obtain for the use of Congress and the enlightenment of the public authentic and comprehensive information regarding trading in grain futures."<sup>12</sup> To that end, that legislation imposed recordkeeping and reporting requirements on boards of trade. One requirement of the implementing regulations was that records should be made in such a manner as to show whether the persons for whom transactions were executed were "engaged in the cash grain business."<sup>13</sup> The express purpose of this requirement was

regardless whether the trader appears in more than one category (non-commercial traders may be long or short only and may be spreading; commercial traders may be long and short). To determine the number of traders in each category, however, a trader is counted in each category in which the trader holds a position. Therefore, the sum of the numbers of traders in each category will often exceed the "Total" number of traders in that market.

<sup>8</sup> For selected commodities where there is a well-defined marketing season or crop year, the COT data are broken down by "old" and "other" crop years.

<sup>9</sup> Also available at that site are historical COT data going back to 1986 for futures-only reports and to 1995 for option-and-futures-combined reports.

<sup>10</sup> 42 Stat. 998, September 21, 1922.

<sup>11</sup> 49 Stat. 1491, June 15, 1936, 7 U.S.C. 1 *et seq.*

<sup>12</sup> Annual Reports of the Department of Agriculture for 1924, Report of the Grain Futures Administration on Administration of the Grain Futures Act, at 2, September 9, 1924.

<sup>13</sup> *Id.* at 6.

to insure that the basic records of all transactions in grain futures will contain information which can be utilized for distinguishing transactions originating with persons engaged in the cash grain business (and therefore presumably representing in considerable part "hedging") from transactions originating with persons not so engaged (and therefore presumably representing for the most part "speculation").<sup>14</sup>

The report characterized the distinction between hedging and speculation as being of "fundamental significance from the public point of view" and one that "deserves systematic reflection in the records kept of transactions in grain futures."

Over the years, the Grain Futures Administration and, after 1936, its successor organization the Commodity Exchange Authority, continued to publish annual statistics concerning hedging versus speculative transactions. Beginning with the adoption of the Commodity Exchange Act in 1936, and as part of amendments to that Act on a number of subsequent occasions, the Commodity Exchange Authority's jurisdiction was expanded beyond grains to cover additional agricultural commodities. The Commodity Exchange Authority designated the exchanges where futures contracts in those commodities were traded as "contract markets" in such commodities.<sup>15</sup> As contract markets in additional commodities were designated, the Authority expanded its annual reports of hedging and speculative positions in futures markets to include additional commodities.<sup>16</sup>

<sup>14</sup> *Id.*

<sup>15</sup> In this context, a "contract market designation" refers to designating an exchange where futures contracts on a particular commodity are traded as a "contract market" in that commodity. For example, after the 1936 Act brought a number of additional agricultural commodities within the Commodity Exchange Authority's jurisdiction, the Authority designated the New York Cotton Exchange as a contract market in cotton and the Chicago Mercantile Exchange as a contract market in butter, eggs and potatoes. As subsequent amendments brought additional commodities within the scope of the Act, further contract market designations followed, including soybeans (1940), soybean oil (1950), soybean meal (1951), frozen concentrated orange juice (1968), and livestock futures (live and feeder cattle, live hogs and frozen pork bellies—all in 1968). Under the Commodity Futures Modernization Act of 2000 ("CFMA"), however, a "contract market designation" refers to the Commission designating (licensing) a board of trade (exchange) as a "designated contract market" ("DCM"). Once designated, a DCM can trade any number of commodities. A DCM can list any new product by filing with the Commission a copy of the rules pursuant to which the product will trade, along with a certification that the product complies with the Act and the Commission's rules thereunder.

<sup>16</sup> In addition, starting in 1942, the Commodity Exchange Authority began issuing "Commodity Futures Statistics" as a separate publication,

In 1962, the Commodity Exchange Authority took what it called "another step forward in the policy of providing the public with current and basic data on futures market operations" by moving beyond an annual statistical recap and initiating the publication of monthly COT reports. The original COT reports were compiled on an end-of-month basis and published on the 11th or 12th calendar day of the following month. The first COT report, covering 13 agricultural commodities, was published on June 13, 1962.

Over the 44 years since then, both the COT reports and the underlying futures markets have undergone a number of significant changes. With respect to the COT reports, the number of commodities covered in the COT reports has continued to expand. In April 1975, the newly formed CFTC succeeded the Commodity Exchange Authority. The Commission continued to publish the COT reports, but expanded the reports' content to include new commodities first brought under the Commission's jurisdiction by the Commodity Futures Trading Commission Act of 1974.<sup>17</sup> In the years since then, scores of new futures and option products have been listed for trading on designated futures exchanges. As noted above, not all these commodities are included in the COT reports, since reports are published only for commodities in which 20 or more traders hold reportable positions. The most recent COT reports published cover 85 to 90 commodities trading on six different DCMs.<sup>18</sup>

In addition to covering additional commodities, the Commission has improved the COT reports in several other ways as well. The Commission has changed the publication schedule several times to provide information to the public more frequently—switching publication from monthly to twice monthly (mid-month and month-end) in 1990, to every two weeks in 1992, and to weekly in 2000. The Commission has also acted to improve the timeliness of the reports—moving publication to the sixth business day after the "as of" date in 1990, and then to the third business

distinct from the USDA annual report. The Commodity Futures Statistics were also expanded to include monthly data, but were still published only on an annual basis.

<sup>17</sup> Public Law 93-463, 88 Stat. 1389, October 23, 1974. The new commodities added in 1974 included coffee, sugar, cocoa, metals, energy products and financial products, among other things.

<sup>18</sup> The COT reports are the most frequently visited section of the Commission's Web site. During 2005, nearly half of the visitors to the Commission's Web site were there primarily to access the COT reports, with approximately 460,000 visitors viewing the reports.

day after the "as of" date in 1992. The Commission has also expanded the scope of the information included in the reports—adding data on the numbers of traders in each category, a crop-year breakout and concentration ratios in the early 1970s and adding data on option positions in 1992. Finally, the Commission has made the COT reports more widely available—moving from a paid subscription-based mailing list to fee-based electronic access in 1993 and, since 1995, making the COT data freely available on the Commission's internet website.

### C. Issues Regarding COT Data

#### 1. Elimination of the Series '03 Reports

One of the historical changes in the COT reports has raised questions with respect to the usage of the COT data in today's market environment. In 1981, the Commission adopted regulations<sup>19</sup> to eliminate the routine filing of series '03 reports by large traders.<sup>20</sup> The purpose of these rules was to reduce paperwork burdens on large traders and the Commission.

Because the series '03 reports included both position information for all reportable traders and the traders' classification of how much of their positions was speculative and how much was hedging, the series '03 reports had provided the data that went to make up the COT reports. In its rulemaking eliminating the series '03 reports, the Commission stated its intention to continue publishing the COT reports using data from the series '01 reports and Form 102,<sup>21</sup> as well as the Form 40,

<sup>19</sup> 46 FR 59960, December 8, 1981.

<sup>20</sup> Series '03 reports were required to be filed with the Commission by any trader who owned or controlled a reportable futures position. Once traders acquired a reportable position in a commodity, they were required to report trades, positions, exchanges of futures for physicals and delivery information regarding that commodity on series '03 reports, and to classify how much of their position was speculative and how much was hedging.

<sup>21</sup> Series '01 reports are reports filed by futures commission merchants ("FCMs"), foreign brokers and exchange clearing members clearing their own trades, with respect to all customer or (for the exchange clearing members) proprietary accounts that attain a reportable position. A series '01 report itemizes the account number and certain positions, deliveries and exchanges of futures (including exchanges of futures for physicals ["EFPs"], swaps ["EFSs"], risk ["EFRs"] and options ["EFOs"]) or other exchanges of futures for a commodity or for a derivatives position) associated with each account carrying a reportable position (See 17 CFR 17.00). The name, address and occupation of the person or persons who own such accounts are separately identified on Form 102 (See 17 CFR 17.01). By aggregating the series '01 and Form 102 information filed with respect to traders with accounts at multiple FCMs or foreign brokers, the Commission can determine the size of each reportable trader's overall position.

Statement(s) of Reporting Trader.<sup>22</sup> However, publication of the COT reports was suspended for approximately 18 months in order to implement computer system changes that would enable the Commission to generate COT data under the revised reporting system.<sup>23</sup> When the COT reports resumed, reportable positions were no longer classified as “hedging” or “speculative” (the series ’03 forms that required traders to make these classifications no longer being available). Rather, reportable positions were classified as “commercial” or “non-commercial,” based on the declarations made in the reporting traders’ Form 40 statements.

The Commission believes that the public perception was, and is, that the “commercial vs. non-commercial” classification in current COT reports is analogous (if not identical) to the “hedging vs. speculation” distinction in the pre-1982 COT reports. Over time, however, derivatives markets (including both exchange-traded and over-the-counter [“OTC”] markets), as well as derivatives trading patterns and practices, have evolved tremendously. Changes have been particularly evident over the last 15 years. As a result of these changes in markets and trading practices, questions have been raised as to whether the “commercial” and “non-commercial” categories of today’s COT reports appropriately classify trading practices that were not contemplated when the “hedging vs. speculation” categories were removed in 1982.

## 2. The Impact of Speculative Position Limit and Hedge Exemption Rules

To protect futures markets from excessive speculation that can cause unreasonable or unwarranted price fluctuations, and to reduce the potential threat of market manipulation, the Act

<sup>22</sup> Each person that holds or controls a reportable position is required to file a Form 40. The Form 40 requires a trader to list its principal business or occupation and to state whether it is “commercially engaged in business activities hedged by the use of the futures or option markets.” If the trader answers “yes,” it is instructed to complete a separate schedule “listing the futures or option contract used, the cash commodity(ies) hedged, or the risk exposure covered, and the marketing occupations associated with hedging uses.”

<sup>23</sup> The Commission notes that eliminating the series ’03 forms as the basis for the COT reports improved the timing and accuracy of the COT reports because: (1) Series ’03 forms were mostly mailed to the Commission from wherever the trader resided, in some cases taking several days to arrive and be processed, whereas series ’01 reports are filed electronically by the following morning; and (2) series ’03 forms were only required to be filed when a reportable trader’s position changed, so that a trader’s delay or failure to file a report often led to an erroneous assumption that the position had not changed.

and Commission regulations require the Commission<sup>24</sup> and the exchanges<sup>25</sup> to impose limits on the size of speculative positions in futures markets. For certain agricultural markets, the speculative limits are determined by the Commission and set out in federal regulations.<sup>26</sup> For all other markets, the speculative limits are determined as necessary by the exchanges according to standards established by the Commission.<sup>27</sup> The Commission and exchanges grant exemptions from their respective speculative position limits for “bona fide hedging.” A hedge is a futures or option transaction or position that normally represents a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel. Hedges must be “economically appropriate to the reduction of risks in the conduct and management of a *commercial enterprise*” [emphasis supplied] and must arise from a change in the value of a hedger’s (current or anticipated) assets or liabilities.<sup>28</sup>

## 3. Hedge Exemptions and the COT Reports

Because both the hedge exemption rules and the standards whereby positions are classified for purposes of the COT reports refer to “commercial” positions, the Commission has considered the classification of a position as “commercial” under the hedge exemption rule as being an appropriate indicator for how the position, and the trader holding it, should be classified for COT purposes. In other words, if an entity holding a particular futures or option position has received a hedge exemption with respect to that position, the position is, by definition, held by a “commercial enterprise.” Accordingly, that position should be reported (via the series ’01 reports, Forms 102 and Forms 40) to the Commission as a “commercial” position, and it would be included within the “commercial” category on the COT reports. Entities in the same type of business, holding similar hedge positions (as reported on their Form 40) are likewise treated as commercials for purposes of the COT reports, even though the entities may not have sought hedge exemptions because they are

<sup>24</sup> See section 4a of the Act.

<sup>25</sup> See section 5(d)(5) of the Act and 17 CFR 150.5.

<sup>26</sup> Speculative position limits for corn, oats, wheat, soybeans, soybean oil, soybean meal, and cotton are set out at 17 CFR 150.2.

<sup>27</sup> Pursuant to those standards, some markets are subject to position accountability rules in lieu of speculative position limits.

<sup>28</sup> See 17 CFR 1.3(z) for the full regulatory definition of “bona fide hedging.”

trading below the level of the position limit so no exemption is required.

As trading practices in the derivatives markets (both exchange and OTC) have continued to evolve over the past 5 years, the Commission has granted hedge exemptions from the Commission speculative limits for certain agricultural commodities to entities whose futures positions reflected various innovative, non-traditional risk management strategies. Based on their classification for hedge exemption purposes, positions based on these non-traditional strategies have been classified in the COT reports as “commercial.” The result is that, over time, the nature of the positions carried in the COT reports for some commodities has changed significantly, raising questions as to whether the COT reports should be reviewed to determine if revisions are needed to reflect changing market conditions.

This issue may be illustrated by reviewing the history of hedge exemption requests.<sup>29</sup> For example, in 1991, the Commission received a request from a “large commodity merchandising firm,” that “engage[d] in commodity related swaps<sup>30</sup> as a part of a commercial line of business.” The firm, through an affiliate, wished to enter into an OTC swap transaction, with a qualified counterparty (a large pension fund), involving an index based on the returns afforded by investments in exchange-traded futures contracts on certain non-financial commodities meeting specified criteria. The commodities making up the index included wheat, corn and soybeans, all of which were (and still are) subject to Commission speculative position limits. As a result of the swap, the swap dealing firm would, in effect, be going short the index. In other words, it would be required to make payments to the counterparty if the value of the index was higher at the end of the swap payment period than at the beginning.

<sup>29</sup> Specific requests, and the Commission’s responses granting or denying those requests, by their very nature, include information regarding the nature of the requesting entity’s trading activities. The express terms of the Act prohibit the Commission from publicly disclosing such information. Section 8(a)(1) of the Act provides in relevant part that “the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.” However, it is possible, without disclosing prohibited information, to provide an overview of certain hedge exemption letters that will illustrate how the nature of the information included in the COT reports has changed over time.

<sup>30</sup> A swap is a privately negotiated exchange of one asset or cash flow for another asset or cash flow. In a commodity swap, at least one of the assets or cash flows is related to the price of one or more commodities.

In order to hedge itself against this risk, the swap dealer planned to establish a portfolio of long futures positions in the commodities making up the index, in such amounts as would replicate its exposure under the swap transaction. By design, the index did not include contract months that had entered the delivery period and the swap dealer, in replicating the index, stated that it would not maintain futures positions based on index-related swap activity into the delivery month. The result of the hedge was that the composite return on the futures portfolio would offset the net payments the swap dealer would be required to make to the counterparty.

Because the futures positions the swap dealer would have to establish to hedge its exposure on the swap transaction would be in excess of the speculative position limits on wheat, corn and soybeans, it requested, and was granted, a hedge exemption for those positions. As discussed above, when those reportable futures positions were incorporated into the COT reports, they were reported as "commercial" positions. Similar hedge exemptions were subsequently granted in other cases where the futures positions clearly offset risks related to swaps or similar OTC positions involving both individual commodities and commodity indexes. These non-traditional hedges were all subject to the same limitations as the original hedge exemption—that the futures positions must offset specific price exposure on a non-discretionary basis (*i.e.*, would not over-weight or under-weight the size or mix of futures based upon a market outlook), would be of equal dollar value to the underlying risk (*i.e.*, be unleveraged), and would not be carried into the delivery month.

#### 4. The Effect on the COT Report

The effect of the entry of these non-traditional hedgers into the marketplace has been to change the composition of the COT reports. Prior to 1991, both the long and the short side of the commercial open interest listed in the COT reports represented traditional hedgers (producers, processors, manufacturers or merchants handling the commodity or its products or byproducts). Since that time, though, trading practices have evolved to such an extent that today, a significant proportion of the long side open interest in a number of major physical commodity futures contracts is held by non-traditional hedgers (*e.g.*, swap dealers), while the traditional hedgers may be either net long or net short (more often, the latter). This has raised questions as to whether the COT report can reliably be used to assess futures

hedging activity by persons hedging exposure in the underlying physical commodity markets.

It should be noted that the Commission's treatment of professionally managed funds<sup>31</sup> in the COT reports generally does not raise the same issue. Professionally managed funds, although they may be appropriately treated as commercials with respect to markets in financial commodities,<sup>32</sup> are usually treated as non-commercials for COT purposes in the markets for physical commodities (including not only agricultural commodities, but energy products, metals and other physical commodities as well).

### II. Alternatives in Addressing Issues Related to the COT Reports

In view of the changes in markets and trading patterns described above, the Commission is now seeking public comment concerning whether it should adopt any changes to the way data are presented in the COT reports. Such action could be taken as part of the Commission's ongoing efforts both to maintain an information system that reflects changing market conditions, and to provide the public with useful information regarding futures and option markets. In addition, the Commission is seeking comment as to whether it should stop publishing the COT reports altogether if it is determined that either: (1) There are data anomalies in the reports for which no satisfactory solution can be found; or (2) the data in the reports provide no public benefit.<sup>33</sup>

### III. Questions

The Commission has formulated the following questions based upon its initial review of issues relating to the COT reports. Responses from interested parties will advance the Commission's understanding of these issues and, it is hoped, point the way to a satisfactory resolution of any problems that are

<sup>31</sup> For these purposes, "professionally managed funds" includes traders registered as commodity trading advisors and commodity pool operators, as well as funds commonly referred to as "hedge funds." A hedge fund has been described as a private investment fund or pool that trades and invests in various assets such as securities, commodities, currency, and derivatives on behalf of its clients.

<sup>32</sup> A professionally managed fund trading in futures markets for financial products (equity, debt or foreign currency) might very well be hedging various OTC or exchange-traded products.

<sup>33</sup> The COT reporting program is not mandated by either the Act or Commission regulations. Therefore, if, after reviewing the comments received in response to this notice, the Commission decides to take any action with respect to the COT reporting program, it can do so without further notice or opportunity for comment.

identified regarding the COT reports. Each enumerated question should be addressed individually. Interested parties are also welcome to address other topics or issues that they believe are relevant to the COT reports.

1. What types of traders in the futures and option markets use the COT reports in their current form, and how are they using the COT data? More specifically:

(a) How do traders use the COT information on commercial positions?

(b) How do they use the COT information on non-commercial positions?

(c) In particular, with respect to information on non-commercial positions, what information or insights do traders gain from the COT reports regarding the possible impact of futures trading on the underlying cash market?

2. Are other individuals or entities (academic researchers or others) using the COT reports and, if so, how?

3. Do the COT reports, in their current form, provide any particular segment of traders with an unfair advantage?

4. Should the Commission continue to publish the COT reports?

5. If the Commission continues to publish the COT reports, should the reports be revised to include additional categories of data—for example, non-traditional commercial positions, such as those held by swap dealers?

6. As a general matter, would creating a separate category in the COT report for "non-traditional commercials" potentially put swap dealers or other non-traditional commercials at a competitive disadvantage (since other market participants would generally know that their positions are usually long, are concentrated in a single futures month, and are typically rolled to a deferred month on a specific schedule before the spot month)?

7. More specifically, if the data in the COT reports are made subject to further, and finer, distinctions, such as adding a category for non-traditional commercials:

(a) Would it increase the likelihood that persons reading the reports would be able to deduce the identity of the position holders, or other proprietary information, from the reports?

(b) Could such persons use information gleaned from the reports to gain a trading advantage over the reported position holders?

(c) In such case, in order to reduce the likelihood of publishing categories with few traders, which might provide information giving other traders a competitive advantage over the reported traders, should the Commission consider raising the threshold number of reportable traders needed to publish

data for a market from 20 traders to some larger number of traders?

8. If the data in the COT reports are made subject to further, and finer, distinctions, should the reports be revised for all commodities, or only for those physical commodity markets in which non-traditional commercials participate?

9. If a non-traditional commercial category were added to markets in physical commodities, what should be done with financial commodities, where "non-traditional commercials" would be essentially an empty category (since, in financial commodities, swap dealers would fall within the pre-existing "commercial" category)?

10. The Commission has observed that the non-traditional commercials tend to be long only and tend not to shift their futures positions dramatically—even in the face of substantial price movements. If the data in the COT reports are made subject to further, and finer, distinctions, would issuing the additional data on a periodic basis, in the form of a quarterly or monthly supplement, be sufficient?

11. Some reportable traders engage in both traditional (physical) and non-traditional (financial) commercial activity in the same commodity market. If the data in the COT reports are made subject to further, and finer, distinctions, such traders would have to break out their non-traditional commercial OTC hedging activity into a separate account. Would such a requirement represent an undue burden to those traders?

Issued in Washington, DC, on June 15, 2006, by the Commission.

**Eileen Donovan,**

*Acting Secretary of the Commission.*

[FR Doc. E6-9722 Filed 6-20-06; 8:45 am]

**BILLING CODE 6351-01-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[DOD-2006-OS-0150]

#### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice to add a system of records.

**SUMMARY:** The Office of the Secretary of Defense proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The changes will be effective on July 21, 2006 unless comments are

received that would result in a contrary determination.

**ADDRESSES:** Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.  
**FOR FURTHER INFORMATION CONTACT:** Ms. Juanita Irvin at (703) 696-4940.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on June 14, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 15, 2006.

**C.R. Choate,**

*Alternate, OSD Federal Register Liaison Officer, Department of Defense.*

#### DHA14

##### SYSTEM NAME:

Computer/Electronic Accommodations Program for People with Disabilities.

##### SYSTEM LOCATION:

Computer/Electronic Accommodations Program (CAP) Data Management System (eCMDMS), 5109 Leesburg Pike, Sky 6, Suite 504, Falls Church, VA 22041-3891.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prospective DoD and other Federal agency employees, current DoD and other Federal agency employees, and members of the Armed Forces.

##### CATEGORIES OF RECORDS IN THE SYSTEM:

Information includes but is not limited to name, address, phone number, medical and disability data, history of accommodations being sought and their disposition, and other documentation, e.g., CAP Speech Form, Telework Agreement, etc., used in support of the request for an assistive technology solution. Product and vendor contact information to include order/invoices/declination/cancellation

data for the product and identification of vendors, vendor products used, and product costs.

##### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Rehabilitation Act of 1973, as amended; EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, March 1, 1999 and Special Work Arrangements As Accommodations for Individuals with disabilities, USD(P&R) Memorandum, February 26, 1999; E.O. 13160, 23 June 2000.

##### PURPOSE(S):

To administer the Computer/Electronic Accommodations Program, a centrally funded Federal program, which provides assistive (computer/electronic) technology solutions to individuals who have disabilities so that an accessible work environment is provided to individuals with hearing, visual, dexterity, cognitive, and/or communications impairments. The system identifies the computer/electronic accommodations being provided and tracks all such accommodations for DoD as well as 64 partner agencies.

##### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to U.S.C. 552a(b)(3) as follows:

To Federal agencies participating in the Computer/Electronic Accommodations Program for purposes of providing information as necessary to permit the agency to carry out its responsibilities under the program.

To commercial vendors for purposes of providing information as necessary to permit the vendor to identify and provide assistive technology solutions for individuals with disabilities.

The DoD "Blanket Routine uses" set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

##### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

###### STORAGE:

Records are maintained on electronic storage media.

###### RETRIEVABILITY:

Records are retrieved by employee name address, telephone, and disability information.