

3—Electronics, ECCN 3A292 is removed.

■ 28. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, ECCN 3A992 is amended in the “Items” paragraph, under the “List of Items Controlled” section, by adding paragraphs .d through .g and by adding a Note at the end of ECCN to read as follows:

**3A992 General purpose electronic equipment not controlled by 3A002.**

\* \* \* \* \*

**List of Items Controlled**

\* \* \* \* \*

Items:

\* \* \* \* \*

- d. Non-modular analog oscilloscopes having a bandwidth of 1 GHz or greater;
- e. Modular analog oscilloscope systems having either of the following characteristics:
  - e.1. A mainframe with a bandwidth of 1 GHz or greater; or
  - e.2. Plug-in modules with an individual bandwidth of 4 GHz or greater;
- f. Analog sampling oscilloscopes for the analysis of recurring phenomena with an effective bandwidth greater than 4 GHz;
- g. Digital oscilloscopes and transient recorders, using analog-to-digital conversion techniques, capable of storing transients by sequentially sampling single-shot inputs at successive intervals of less than 1 ns (greater than 1 giga-sample per second), digitizing to 8 bits or greater resolution and storing 256 or more samples.

**Note:** This ECCN controls the following “specially designed” “parts” and “components” for analog oscilloscopes:

1. Plug-in units;
2. External amplifiers;
3. Pre-amplifiers;
4. Sampling devices;
5. Cathode ray tubes.

■ 29. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 3E001 is amended by revising the ECCN heading to read as follows:

**3E001 “Technology” according to the General Technology Note for the “development” or “production” of equipment or materials controlled by 3A (except 3A980, 3A981, 3A991 3A992, or 3A999), 3B (except 3B991 or 3B992) or 3C (except 3C992).**

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■ 30. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, ECCN 3E292 is removed.

Dated: November 15, 2016.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

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**COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Part 4**

**RIN 3038–AE47**

**Commodity Pool Operator Financial Reports**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is amending certain of its regulations applicable to the financial reports that each person registered or required to be registered as a commodity pool operator (CPO) must provide for each commodity pool that it operates. These amendments: Permit the use of additional alternative generally accepted accounting principles, standards or practices; provide relief from the Annual Report audit requirement under certain circumstances; and make clear that an audited Annual Report must be distributed and submitted at least once during the life of a pool.

**DATES:** Effective December 27, 2016.

**FOR FURTHER INFORMATION CONTACT:** Christopher W. Cummings, Special Counsel, 202–418–5445, [ccummings@cftc.gov](mailto:ccummings@cftc.gov), or Barbara S. Gold, Associate Director, 202–418–5441, [bgold@cftc.gov](mailto:bgold@cftc.gov), Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st NW., Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Part 4 of the Commission’s Regulations*

Part 4 of the Commission’s regulations governs the operations and activities of CPOs.<sup>1</sup> It requires each CPO registered or required to be registered with the Commission: To deliver to each participant in its commodity pool a Disclosure Document for the pool containing specified information (Regulations 4.21, 4.24, 4.25 and 4.26); to distribute to each participant periodic unaudited Account Statements for the pool (Regulation 4.22(a)) and an audited

<sup>1</sup> Section 1a(11) of the Commodity Exchange Act (Act or CEA) defines the term “commodity pool operator” and CEA Section 4m(1) generally requires each person who comes within the CPO definition to register as a CPO with the Commission. The Act is found at 7 U.S.C. 1 *et seq.* (2012). The Commission’s regulations are found at 17 CFR Ch. I (2016). Both the Act and the Commission’s regulations are accessible through the Commission’s Web site, <http://www.cftc.gov>.

Annual Report for the pool (Regulation 4.22(c)); to file certain additional financial reports for the pool (Regulation 4.27); and to make and keep specified books and records (Regulation 4.23). Additionally, part 4 prohibits certain activities on the part of all CPOs (Regulations 4.20 and 4.41) and provides for various CPO definitional exclusions (Regulation 4.5), CPO registration exemptions (Regulation 4.13), and compliance exemptions from otherwise applicable CPO requirements (Regulations 4.7, 4.12(b), and 4.12(c)).

*B. The Proposal and the Amendments*

Over the years, and pursuant to authority delegated to it by Regulation 140.93, Commission staff has provided exemptive relief from specific part 4 requirements on a case-by-case basis.<sup>2</sup> On August 5, 2016, the Commission proposed to codify certain of these exemptions as applicable to the Annual Report (Proposal).<sup>3</sup> In response to the comments received, the Commission is adopting as proposed certain amendments to its regulations applicable to the Annual Report audit requirement. Additionally, in response to the comments, the Commission is adopting various other amendments to its regulations applicable to the Annual Report and other CPO financial reports. Each of these amendments (collectively, the Amendments), is intended to provide relief to CPOs, under specified standards, from otherwise applicable requirements.

As is discussed more fully below, these Amendments provide for the use of certain additional alternative generally accepted accounting principles, practices or standards (each an Additional Alternative GAAP) in Annual Reports and periodic Account Statements—whether distributed pursuant to Regulation 4.22 or Regulation 4.7—and in Form CPO–PQR. The Amendments provide for relief

<sup>2</sup> These letters were issued by the Commission’s Division of Swap Dealer and Intermediary Oversight (DSIO) and its predecessors, the Division of Clearing and Intermediary Oversight and the Division of Trading and Markets.

Regulation 140.93 currently delegates to the Director of DSIO “all functions reserved to the Commission” in Regulation 4.12(a)—which provides that the Commission may exempt any person or any class or classes of persons from any provision of part 4 if it finds that the exemption is not contrary to the public interest and the purposes of the provisions from which the exemption is sought and, further, that the Commission may grant the exemption subject to such terms and conditions as it may find appropriate.

<sup>3</sup> 81 FR 51828. Part 4 contains many similar provisions applicable to commodity trading advisors (CTAs). The Proposal did not also pertain to CTAs, however, because CPOs are required to distribute Annual Reports and CTAs are not subject to any such requirement.

from the Annual Report audit requirement where: (1) The pool's first fiscal year is four months or less, as measured by the date on which the CPO first receives funds, securities or other property from a person who is not a pool "insider;" (2) no more than 15 participants in the pool during its first fiscal year are persons who are not pool insiders, and their aggregate gross capital contributions to the pool during that time do not exceed \$3 million; (3) a pool insider includes, among others, the pool's CPO, the pool's CTA, any person controlling, controlled by, or under common control with the CPO or CTA, and any principal of the foregoing; (4) the CPO obtains from each participant other than the insiders listed in (3) above a waiver of their right to timely receive an audited Annual Report for the pool's first fiscal year (which waiver the CPO may obtain in advance from a pool participant by including the waiver in the pool's subscription agreement or other agreement between the participant and the pool, and which waiver must be in a form substantially as set forth in the applicable regulation); and (5) the CPO distributes an audited Annual Report for the combined time period of the short first fiscal year plus the subsequent first twelve-month fiscal year. Additionally, the Amendments provide that a CPO is not required to distribute an audited Annual Report for any year where the pool had as participants only the insiders listed in (3) above, provided the CPO obtains a waiver of their right to receive an audited Annual Report from each such insider participant. Finally, and notwithstanding the availability of any of the foregoing relief from the audit requirement of the Annual Report, the Amendments make clear that regardless of the situation—*i.e.*, whether the pool is comprised solely of insiders who have a close relationship with the CPO, it has other insiders as participants, or it has one or more participants who are not an insider—and regardless of whether the CPO has previously qualified for relief from the Annual Report audit requirement, the CPO must distribute an audited Annual Report at least once during the life of the pool.

### C. Additional Relief

In adopting the standards set forth in these amendments, the Commission has endeavored to balance the needs of pool participants—particularly those who are not closely involved with the pool's operation—for accurate and reliable financial information with the expense of converting non-United States (U.S.) financial statements to U.S. generally accepted accounting principles (U.S.

GAAP) or the expense of obtaining an audit of an Annual Report by an independent public accountant for a relatively short period of time. Thus, although CPOs may continue to request from staff exemptive relief from financial reporting requirements, the Commission intends that staff restrict the issuance of any such relief from the standards it is adopting today to exceptional circumstances involving unique situations.<sup>4</sup>

## II. Comments and Responses

### A. In General

The Commission received five comment letters on the Proposal, as follows: One from a person registered as a CTA and an investment adviser; one from a registered futures association; two from organizations that represent the global alternative investment industry; and one from a law firm that represents CPOs and CTAs.<sup>5</sup> On the whole, the commenters supported the Proposal. Additionally, commenters recommended further relief from Annual Report requirements, and from other CPO financial reporting requirements.<sup>6</sup> For the reasons provided below, the Commission has included certain of these recommendations in the amendments being published today but has declined to include certain other recommendations.

<sup>4</sup> Regulation 140.99 governs requests for staff exemptive, no-action and interpretative letters.

<sup>5</sup> See, respectively, the following: Letter dated September 19, 2016, from Ellen Needham, President, SSGA Funds Management, Inc. (SSGA); Letter dated September 20, 2016, from Thomas W. Sexton III, Senior Vice President, General Counsel and Secretary, National Futures Association (NFA); Letter dated September 16, 2016, from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association (MFA); Letter dated September 20, 2016, from Jiri Krol, Deputy Chief Executive Officer and Global Head of Government Affairs, Alternative Investment Management Association (AIMA); and Letter dated September 20, 2016, from Rita M. Molesworth, Esq., Willkie Farr & Gallagher LLP (Willkie Farr). These comment letters currently are available on the Commission's Web site at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1725>.

The Proposal as initially published required comments to be received by the Commission on or before September 6, 2016. The Commission subsequently extended the comment period to September 20, 2016. See 81 FR 61147 (Sep. 6, 2016).

<sup>6</sup> Moreover, one of the commenters recommended including in the regulations at issue various amendments relative to fund of funds' operations and to situations where a pool invests in illiquid assets—for example, providing additional time for the CPO of a fund of funds to distribute periodic Account Statements. See Willkie Farr comment letter. However, comments relative to fund of funds' operations or to situations where a pool invests in illiquid assets are outside the scope of this rulemaking, and as such, the Commission is not addressing them in this rulemaking.

*B. Regulation 4.22(d)(2): Use of Additional Alternative Generally Accepted Accounting Principles, Practices or Standards*

### 1. In General

The Commission proposed to amend Regulation 4.22(d)(2) to permit the CPO of a pool organized outside the U.S. in a jurisdiction that uses the accounting principles, standards or practices followed in the United Kingdom, Ireland, Luxembourg or Canada to present and compute the financial statements in the Annual Report for the CPO's pool in accordance with the accounting principles, standards or practices of the jurisdiction in which the pool was organized. The proposed provision was an expansion of the provision in Regulation 4.22(d)(2) pursuant to which a CPO of a pool organized outside the U.S. could use International Financial Reporting Standards (IFRS). As the Commission explained, this proposed amendment was supported by its staff's experience in providing relief to use an Additional Alternative GAAP on a case-by-case basis.<sup>7</sup> The Commission received fully supportive comments on this proposed amendment to Regulation 4.22(d)(2)<sup>8</sup> and, accordingly, is adopting the amendment as proposed.

### 2. Use of an Additional Alternative GAAP in Other Required CPO Financial Reports

The Commission also received several comments urging that the Additional Alternative GAAPs be available for use in other CPO financial reports,<sup>9</sup> specifically, in Regulation 4.7(b)(2) account statements and in Form CPO-PQR. Regulation 4.7 provides certain relief to the CPO of a commodity pool in which the participants are exclusively "qualified eligible persons," as that term is defined in the regulation. For example, Regulation 4.7(b)(2) provides relief from certain of the requirements of Regulations 4.22(a) and (b) regarding periodic Account Statements and Regulation 4.7(b)(3) provides relief from certain of the requirements of Regulation 4.22(c) regarding Annual Reports. One of the persons commenting on the Proposal recommended that the Commission amend Regulation 4.7(b)(2) so as to permit a CPO that has elected an Additional Alternative GAAP to be able to use that Additional Alternative GAAP in presenting and computing the

<sup>7</sup> See 81 FR at 51829.

<sup>8</sup> See MFA and SSGA comment letters.

<sup>9</sup> See MFA, NFA and Willkie Farr comment letters.

periodic statements of a pool for which a CPO has claimed relief under Regulation 4.7(b).<sup>10</sup> As this commenter noted, Regulation 4.7(b)(2) requires the use of U.S. GAAP in presenting and computing periodic statements, and Regulation 4.7(b)(2)(v) specifically permits a CPO that has elected pursuant to Regulation 4.22(d)(2) to use IFRS for its Annual Report to present and compute periodic statements in accordance with IFRS. Accordingly, absent the requested amendment, a CPO that had claimed relief under Regulation 4.7 and that also elected to use an Additional Alternative GAAP would not be able to prepare and compute the financial statements in its pool's Annual Report and its pool's periodic statements in a consistent manner (the Annual Report would be in accordance with an Additional Alternative GAAP, while the periodic statements could only be in accordance with U.S. GAAP or IFRS).<sup>11</sup> The Commission agrees with this recommendation, because it will enable CPOs to maintain consistent books and records and should facilitate review of the pool's operations by both participants and regulators. Accordingly, the Commission, has amended Regulation 4.7(b)(2)(v) to permit the use of an Additional Alternative GAAP for periodic financial statements prepared and distributed for a pool for which the CPO has claimed relief under Regulation 4.7(b). In this regard, the Commission notes that Regulation 4.22(d)(2)(i) permits the CPO of a pool that meets the criteria specified therein to use IFRS (and following adoption of the amendments to Regulation 4.22(d)(2), any Additional Alternative GAAP) to present and compute the pool's Annual Report, whether the CPO is distributing the Annual Report pursuant to Regulation 4.22(c) or Regulation 4.7(b)(3). Accordingly, it has not been necessary to amend Regulation 4.7 to permit a CPO claiming relief under Regulation 4.7 and under Regulation 4.22(d)(2) to use an Additional Alternative GAAP to present and compute Annual Reports.

The same commenter and two other commenters recommended that a CPO electing to use an Additional Alternative GAAP should be able to also use that Additional Alternative GAAP

<sup>10</sup> See NFA comment letter.

<sup>11</sup> Where, however, a CPO has not claimed exemption under Regulation 4.7, Regulation 4.22(a)(6) already provides that if the CPO meets the conditions of Regulation 4.22(d)(2)(i) and files the required notice, the CPO may follow the same accounting treatment with respect to the computation and presentation of the account statement. Accordingly, the issue raised by the commenter only arises in the context of Regulation 4.7.

in connection with the preparation of the CPO's Form CPO-PQR (Quarterly Report for Commodity Pool Operators).<sup>12</sup> The Commission also agrees with this recommendation, as it similarly will facilitate computation of, and comparison among, CPO financial reports. Accordingly, the Commission is amending Regulation 4.27(c)(2) to provide that a CPO who has elected to use Alternative Additional GAAP for its pool's Annual Report may also use that Alternative Additional GAAP in connection with reporting financial information on Form CPO-PQR.<sup>13</sup>

### *C. Regulation 4.22(g)(2): Audit Requirement for a Pool's First Fiscal Year*

#### 1. In General

The Commission proposed to amend Regulation 4.22(g)(2) by making an exemption from the requirement to have the first fiscal year Annual Report audited available thereunder for the CPO of a pool for which the first fiscal year was three months or less and where the participants and their contributions meet certain limits, discussed below. Referencing prior staff relief, the Commission explained that "where there are a limited number of participants in the pool and a limited amount of funds have been committed . . . the cost of an audit for the short period of time of the pool's operation would likely be unduly burdensome."<sup>14</sup> As proposed, an unaudited Annual Report for the short first fiscal year would be distributed, and the subsequent audited Annual Report for the first twelve-month fiscal year would also cover that first short fiscal year. Most of the comments that the Commission received on the Proposal addressed this provision, and though generally favorable, some raised additional issues. In response to these comments, the Commission is adopting

<sup>12</sup> See NFA, MFA and Willkie Farr comment letters.

<sup>13</sup> Form CPO-PQR currently provides at Item 9 of the Instructions that All financial statements in this Report must be presented and computed in accordance with U.S. GAAP consistently applied. The Commission intends to begin the process of amending Form CPO-PQR and its instructions upon publication of this **Federal Register** release. In this regard, and as amended, Regulation 4.27(c)(2) provides that notwithstanding anything in the Form CPO-PQR or its instructions to the contrary, a CPO that meets the conditions to use an Additional Alternative GAAP and has filed notice to use it may use that Additional Alternative GAAP in its Form CPO-PQR.

<sup>14</sup> See 81 FR at 51829. The Commission notes that none of the commenters on the Proposal offered any empirical data regarding the cost of an audit for a three-month fiscal year or the difference, if any, in the cost for other partial-year periods.

the amendments to Regulation 4.22(g)(2) it proposed, with certain modifications.

#### 2. Stub Period

The Commission proposed to measure the pool's first fiscal year, for purposes of determining whether it met the proposed three-month criterion, from the date of formation of the pool (the stub period).<sup>15</sup> The Commission explained that it had proposed this date "to ensure that all CPOs and their pool participants are on a level playing field with respect to both what information the Annual Report must contain for the pool's first fiscal year, and the requirement that such information be audited."<sup>16</sup>

One commenter asked the Commission to consider whether using this date would unduly restrict a CPO's ability to avail itself of the relief.<sup>17</sup> Another commenter stated that the stub period should be expanded to six months, and that it be measured from the day that the pool began trading.<sup>18</sup> Still another commenter recommended either measuring the stub period from the day the pool began trading or expanding the stub period to six months from the date on which the pool first received subscription amounts from non-insiders (*i.e.*, from those persons whose participation and capital contributions would be counted for purposes of determining eligibility for the exemption).<sup>19</sup> The Commission believes that pool participants should have access to audited financial information about the pool as promptly as practical, but that insiders such as the CPO, the pool's CTA and their principals and affiliates (who may have direct access to the pool's books and trading records) have less pressing need for audited financial statements or to have them quickly. Moreover, a pool may hold participant money for a substantial period of time before it enters its first trade, and its participants should be able to know to what use their money has, in the meantime, been put. Thus, in response to the foregoing comments, the Commission has decided to adopt a four-month stub period and to calculate the stub period from the day on which the CPO first receives funds,

<sup>15</sup> Regulation 4.22(g)(1) provides that a pool is deemed to be formed as of the date the pool operator first receives funds, securities or other property for the purchase of an interest in the pool.

<sup>16</sup> See 81 FR at 51830.

<sup>17</sup> See NFA comment letter.

<sup>18</sup> See AIMA comment letter; *see also*, NFA comment letter.

<sup>19</sup> See MFA comment letter. Pool insiders are discussed below, at Paragraph C.4 of this section.

securities or other property from a person who is not a pool insider.

### 3. Size of the Pool

The Commission had also proposed that in order to be eligible for the audit requirement exemption, the CPO may have accepted no more than \$1,500,000 in aggregate gross capital contributions from non-insiders. One commenter urged the Commission to ignore the size of the pool.<sup>20</sup> Another recommended that the Commission *either* ignore the size of the pool, *or* increase the maximum aggregate gross capital contribution amount to \$6 million and require that the pool satisfy either the proposed 15-participant non-insider limit or the \$6 million capital contribution amount.<sup>21</sup> After considering these comments, the Commission has determined to increase the aggregate gross capital contribution limit from non-insiders to \$3 million, and to maintain as proposed the requirement that the pool meet both the participant and the (now \$3 million) aggregate gross capital contribution limits (from non-insiders). Based on staff's experience in this area, and in the absence of any data required by the Commission or provided by the commenters regarding capital collected during the first four months of a pool's operation, the Commission believes that this amount (\$3 million) strikes a reasonable balance between the amounts advanced in the Proposal and in the comments thereon, and that this amount will satisfy the needs of CPOs for stub period relief in the future.

Another commenter asked for clarification as to whether the term "aggregate gross capital contributions" as used in the Proposal has the same meaning as "aggregate gross capital subscriptions" as used in Regulation 4.25(a)(i)(1)(D).<sup>22</sup> The Commission confirms that both terms include all capital contributed to the pool, notwithstanding any subsequent withdrawals.

### 4. Insiders

The Proposal included a list of persons who would not be counted as participants and whose contributions would not be counted in determining whether the aggregate gross capital contributions received by the CPO for the pool would exceed the criteria for eligibility for the proposed audit requirement exemption. As the Commission explained, those insiders were the same persons whose

contributions are not counted in determining a CPO's eligibility for the registration exemption for the operator of a family, club or small pool in Regulation 4.13(a)(2).<sup>23</sup> Two commenters urged that the list be expanded—for example, to include any entity that controls, is controlled by or is under common control with any of the listed persons.<sup>24</sup> One of these commenters further suggested that for an exempt pool under Regulation 4.7, the Commission include among the list of insiders "knowledgeable employees" and certain other qualified eligible persons.<sup>25</sup> Upon further consideration of the purpose of this amendment to Regulation 4.22(g), and in response to these comments, the Commission has added to the list of insiders any person controlling, controlled by, or under common control with the pool's CPO or CTA, along with any principal of the foregoing. As one of the commenters noted, this augmentation is consistent with the Commission's inclusion of such persons in other Annual Report regulations.<sup>26</sup>

### 5. Waivers

Under the Proposal, before a CPO could claim relief from the audit requirement for the pool's stub period under Regulation 4.22(g)(2), the CPO would be required to obtain written waivers of the right to receive an audited Annual Report from each participant who would have been entitled to receive an audited Annual Report. One commenter made several recommendations concerning the proposed waiver requirement.<sup>27</sup> The first was to permit waivers to be obtained ahead of time by including them in the subscription agreement for the pool or other agreement with the participant. The Commission believes that this is a useful suggestion, and has included it in the regulation as adopted. However, to ensure that the waiver is not obscured or overlooked, the regulation provides that the waiver must constitute a page separate from any other text in the agreement, and that the participant must separately sign and date it. The second recommendation was to eliminate the proposed prescribed language for the waiver, in favor of simply stating the information that must be included. In response to this comment, although the regulation as adopted retains the specified

language, it now provides that the written waiver be in a form substantially similar to the text. The third recommendation was to not require a waiver from any person whose participation and contribution were excluded from the limits of the stub period relief. The Commission agrees that a waiver should not be required of those participants who have a particularly close relationship to the pool, and as adopted, Regulation 4.22(g)(2)(ii)(c)(1) provides that waivers need not be obtained from the pool's CPO, the pool's CTA, any person controlling, controlled by, or under common control with the pool's CPO or the pool's CTA, or any principal of the foregoing.

### 6. Case-by-Case Relief

Finally, two commenters asked the Commission to confirm that the staff will continue to entertain case-by-case requests for relief from the audit requirement with respect to stub period Annual Reports.<sup>28</sup> As stated, above, the Commission intends that staff restrict the issuance of any such relief from the standards it is adopting today to exceptional circumstances involving unique situations.

#### *D. Regulation 4.22(c)(7): Unavailability of Audit Requirement Exemption*

In order to ensure that an audit is conducted at least once during the life of a commodity pool, the Commission proposed to amend Regulation 4.22(c)(7)(iii) to make the audit requirement exemption for the final report upon liquidation of a pool unavailable where the CPO has not previously distributed an audited Annual Report.<sup>29</sup> Thus, if a CPO claimed the stub period relief under amended Regulation 4.22(g)(2), the CPO could not subsequently claim the relief under Regulation 4.22(c)(7)(iii) for the final report upon liquidation unless in the intervening time the CPO had distributed at least one audited Annual Report for the pool. The Commission received one comment on this proposed amendment, urging it to require instead that the required waiver include an acknowledgment that the pool participant will not be receiving any audited Annual Report.<sup>30</sup> The Commission has not adopted this recommendation, because it does not believe that the suggested alternative is consistent with the customer protection goal of the Annual Report audit requirement—*i.e.*, to promote greater

<sup>23</sup> See 81 FR at 51830.

<sup>24</sup> See MFA and SSGA comment letters.

<sup>25</sup> See MFA comment letter.

<sup>26</sup> See MFA comment letter, referring to Regulation 4.22(c)(8).

<sup>27</sup> See *id.*

<sup>28</sup> See AIMA and MFA comment letters.

<sup>29</sup> See 81 FR at 51830.

<sup>30</sup> See MFA comment letter.

<sup>20</sup> See AIMA comment letter.

<sup>21</sup> See MFA comment letter.

<sup>22</sup> See Willkie Farr comment letter.

accuracy in financial statements and provide an independent review of the pool's activities.<sup>31</sup>

Additionally, the Commission received comments urging it generally not to require a CPO to obtain waivers from insiders. The Commission believes that such a position would not be inconsistent with the purpose of the Annual Report requirement (stated above). Accordingly, the Commission has determined to amend Regulation 4.22(c)(7) to provide that a CPO seeking to claim relief from the audit requirement with respect to a final report upon liquidation of a pool need not obtain waivers from persons who have a particularly close relationship with the operation of the pool (the pool's CPO, its CTA, any person controlling, controlled by, or under common control with the pool's CPO or the pool's CTA, or any principal of the foregoing).<sup>32</sup>

#### E. Specific Requests for Comments

The Commission posed several specific questions in the Proposal seeking public input on particular issues. The following is the only question that elicited a response:

Should the Commission adopt a provision whereby a CPO could claim relief from the Annual Report audit requirement for a pool in which the only participants were the CPO and one or more other 'insiders' (*i.e.*, the persons identified in proposed Regulation 4.22(g)(2)(ii)), regardless of the amount of capital contributed to the pool? What other criteria, if any, should be required?<sup>33</sup>

The sole commenter responding to this question recommended that the Commission adopt such an exemption, and that the range of insiders include not only the persons listed in proposed Regulation 4.22(g)(2)(ii), but also any entity that wholly owns or is under common ownership with the pool's CPO, the pool's CTA or any principal of the CPO or CTA.<sup>34</sup> The commenter further recommended that: Insiders should include trusts beneficially owned and controlled by principals of the CPO or CTA, or their respective

parents, spouses, siblings or children; such an exemption should impose no limit on capital contributions or on the number of participants; and the pool's organizational or offering documents should disclose "that no audited annual report will be provided so long as only insiders are permitted investors." The Commission agrees in part with this commenter's suggestions, and is adopting a further amendment to Regulation 4.22(d)(1) to provide that the requirement that a pool Annual Report be audited does not apply for any fiscal year during which the only participants in the pool are one or more of the following: The pool's CPO; its CTA; any person controlling, controlled by or under common control with the CPO or CTA; or any principal of the foregoing, provided that the CPO: (1) Obtains written waivers from the participants of their right to receive an audited Annual Report for that fiscal year; (2) keeps those waivers as records pursuant to Regulation 4.23; and (3) distributes an audited Annual Report at least once during the life of the pool.

### III. Related Matters

#### A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires Federal agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, to provide a regulatory flexibility analysis regarding the economic impact on those entities. In the Proposal, the Commission explained that previously it had established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the requirements of the RFA and that, with respect to CPOs, a CPO was a small entity for the purpose of the RFA if it met the criteria for an exemption from registration under Regulation 4.13(a)(2).<sup>35</sup> Thus, because the Proposal applied to persons registered or required to be registered as a CPO, the Commission determined that the RFA was not applicable to it.<sup>36</sup> The Commission did not receive any comments on this determination.

The amendments to its regulations that the Commission is publishing today continue to apply solely to CPOs registered or required to be registered with the Commission. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the amendments to its

regulations being published by this **Federal Register** release will not have a significant economic impact on a substantial number of small entities.

#### B. Paperwork Reduction Act

##### 1. Overview

The Paperwork Reduction Act of 1995 (PRA)<sup>37</sup> imposes certain requirements on Federal agencies (including the Commission) in connection with conducting or sponsoring any collection of information as defined by the PRA.

As discussed in the Proposal, the Amendments contain collections of information for which the Commission has previously received control numbers from the Office of Management and Budget (OMB). The title for these collections of information is "Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants,"<sup>38</sup> OMB control number 3038-0005."

The responses to these collections of information are mandatory. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number issued by OMB.

The collections of information in the Amendments provide to eligible CPOs: (1) An optional alternative to complying with the requirement to compute and present the financial statements in a pool Annual Report in accordance with U.S. GAAP (or in accordance with IFRS); and (2) an optional alternative to complying with the audit requirement for the Annual Report for a pool's first fiscal year, all as described above. In each case, eligible persons have the option to elect the alternative, but no obligation to do so. For this reason, except to the extent that the Commission has amended the subject OMB control number for PRA purposes to reflect these alternatives, the Amendments are not expected to impose any new burdens on CPOs. Rather, to the extent that the Amendments provide alternative means to comply with existing requirements, and an alternative is elected by a CPO, it is reasonable for the Commission to infer that the alternative is less burdensome to such CPO.

<sup>37</sup> 44 U.S.C. 3501 *et seq.*

<sup>38</sup> Subsequent to the publication of the Proposal, the Commission changed the title of the collection to more accurately reflect the matters covered by the subject collections of information.

<sup>31</sup> 44 FR 1918, 1922 (Jan. 8, 1979).

<sup>32</sup> To reflect these amendments, paragraph (c)(7)(iii) of Regulation 4.22 is now divided into subparagraphs (A) and (B).

As is stated in the preceding paragraph, the CPO must have distributed an audited Annual Report at least once during the life of the pool.

<sup>33</sup> 81 FR at 52830. The Commission also asked whether any information that would be included in the Annual Report under U.S. GAAP would not be included under any of the Additional Alternative GAAPs, and if so whether such information should be separately included, or if a reconciliation should be provided. Finally, the Commission asked for any other issues relevant to the Proposal that the Commission should consider. *See id.*

<sup>34</sup> *See* AIMA comment letter.

<sup>35</sup> *See* 81 FR 51828 at 51830.

<sup>36</sup> *Id.*

## 2. Revisions to Collection 3038–0005

Collection 3038–0005 is currently in force with its control number having been provided by OMB. As discussed above, the Amendments add a new exemption to permit a CPO to use accounting principles, standards or practices established in the U.K., Ireland, Luxembourg or Canada. In order to qualify for this exemption, an eligible CPO must take the steps stated in the Amendments, including providing appropriate notification in the pool's Disclosure Document and submitting the required notice to NFA. The Amendments further add a new exemption to permit a CPO to distribute and submit an unaudited Annual Report for its pool's first (partial) fiscal year and an audited Annual Report for the combined period covered by the pool's first (partial) fiscal year plus the pool's first twelve-month fiscal year. In order to qualify for this exemption, an eligible CPO must take the steps stated in the Amendments, including obtaining waivers from pool participants, submitting the required notice and certification to NFA, providing appropriate notification in the Annual Report, and maintaining the waivers as records. Requiring such actions on the part of an eligible CPO requires revisions to collection 3038–0005. Therefore, the Commission submitted a request to amend collection 3038–0005 to OMB and invited public comment on its paperwork burdens in the Proposal. In particular, as further described in the Proposal, the Commission estimates that CPOs will submit approximately 10 notices per year to take advantage of the alternative to permit the use of accounting principles, standards or practices established in the U.K., Ireland, Luxembourg or Canada, and that CPOs will submit approximately 12 notices per year to take advantage of the alternative to permit distribution and submission of an unaudited Annual Report for a pool's first (partial) fiscal year. Accordingly, the Commission estimates the additional hour burden for collection 3038–0005 to be 34 hours as calculated below.

a. Estimated Additional Hour Burden for Collection 3038–0005 Due to Alternative To Complying With Requirement To Present and Compute a Pool's Financial Statements According to U.S. GAAP

*Anticipated number of claimants:* 10.  
*Frequency of collection:* As needed (initial filing and subsequent compliance).

*Estimated annual responses per claimant:* 1.

*Estimated aggregate number of annual responses:* 10.

*Estimated annual hour burden per registrant:* 1 hr.

*Estimated aggregate annual hour burden:* 10 (10 claimants × 1 hour per claimant).

b. Estimated Additional Hour Burden for Collection 3038–0005 Due to Alternative To Complying With Requirement To Distribute and Submit an Audited Annual Report for a Pool's First Fiscal Year

*Number of claimants:* 12.  
*Frequency of collection:* As needed (initial filing and subsequent compliance and recordkeeping).

*Estimated annual responses per claimant:* 1.

*Estimated aggregate number of annual responses:* 12.

*Estimated annual hour burden per claimant:* 2.<sup>39</sup>

*Estimated aggregate annual hour burden:* 24 (12 claimants × 2 hours per claimant).

## 3. Information Collection Comments

In the Proposal, the Commission invited the public and other Federal agencies to comment on any aspect of the information collection requirements discussed above. The Commission did not receive any such comments.

### C. Cost-Benefit Considerations

Section 15(a) of the Act<sup>40</sup> requires the Commission to consider the costs and benefits of its actions before promulgating a regulation or issuing certain orders under the Act. Section 15(a) further requires the Commission to evaluate the costs and benefits of any such proposed action in light of five specified areas of consideration, discussed below. The baseline against which the Commission compares the costs and benefits of this final rule is Regulations 4.22(c)(7), 4.22(d)(2) and 4.22(g) as they are currently in effect.

#### 1. Background

As proposed and as adopted, a CPO must make a notice filing in order to be able either to use alternative accounting principles, standards or practices other than U.S. GAAP or IFRS, or to distribute and submit an unaudited Annual Report for its pool's first (partial-year) fiscal year and an audited Annual Report that combines information for the pool's first (partial-year) fiscal year with information for the following, first twelve-month fiscal year. In either case,

<sup>39</sup> This figure for annual hour burden per claimant includes one hour for reporting and one hour for recordkeeping.

<sup>40</sup> 7 U.S.C. 19(a).

the required filing is patterned after the notice required by existing Regulation 4.22(d)(2) that a CPO must submit in order to use IFRS. Thus, the notice contains such information as the CPO's name, address and telephone number, the NFA identification numbers of the CPO and the pool, and representations that the CPO complies with the requisite criteria. Additionally, in the second case, the notice includes a certification that the CPO has obtained written waivers from pool participants (other than the pool operator, the pool's commodity trading advisor, any person controlling, controlled by, or under common control with the pool operator or trading advisor, or any principal of the foregoing) of their right to receive an audited Annual Report for the pool's first (partial-year) fiscal year. A notice filing is not required for relief from the Annual Report audit requirement for a fiscal year in which the pool has no participants other than its CPO, its CTA, any person controlling, controlled by, or controlling the CPO or CTA, or any principal of the foregoing. Finally, and as proposed, the Amendments make unavailable the audit requirement exemption in Regulation 4.22(c)(7) for the final report upon liquidation of a pool where the CPO has not previously distributed an audited Annual Report. Thus, for example, if a CPO has claimed the stub period relief under amended Regulation 4.22(g)(2), the CPO cannot subsequently claim the relief under Regulation 4.22(c)(7)(iii) for the final report upon liquidation unless in the intervening time the CPO has distributed at least one audited Annual Report for the pool.

#### 2. Costs

The Commission continues to believe that the differences in the costs of compliance with the Amendments and Regulations 4.22(d)(2) and 4.22(g) as they existed before the Amendments will be small, because the notice filing is designed to mimic the relevant features of existing Regulation 4.22(d)(2). Moreover, the Commission believes that the Amendments will lower costs to CPOs relative to a case-by-case staff-issued exemption, because the Amendments provide a standardized approach to alternative compliance. In addition, due to the unavailability of the audit requirement exemption, there is a cost to the CPO of a pool that is closed without previously having distributed an audited Annual Report, because the CPO now must distribute and submit an audited Annual Report for the pool.

There may also be some cost savings if the conditions of the exemption are

met, because a CPO who operated a pool that met those conditions may distribute to pool participants and submit to NFA an unaudited Annual Report for the pool's first (partial-year) fiscal year and an audited Annual Report that combines information for the pool's first (partial-year) fiscal year with information for the following, first twelve-month fiscal year. These costs savings would be due to the independent public accountant only needing to conduct an audit of the pool once and only issuing one opinion on the pool's financial statements. In the case of audit requirement relief for a pool in which during a given fiscal year the participants are exclusively one or more of the pool's CPO, its CTA, any person controlling, controlled by, or under common control with the pool's CPO or CTA, or any principal of the foregoing, there would also be a cost saving.

In the Proposal, the Commission sought comment concerning whether or not the Proposal would reduce costs for CPO relative to existing Regulations 4.22(d)(2) and 4.22(g). One comment letter addressed the request and stated that "the notice filings required under the proposed rules would result in more timely relief being provided [to CPOs] and decrease the cost of obtaining such relief."<sup>41</sup>

### 3. Benefits

As the Commission explained in the Proposal, an advantage of a notice filing over a Commission staff-processed exemption is timeliness. Thus, a CPO that files a notice under the Amendments will not have to wait for Commission staff to process a request for an individual exemption letter. As the Commission further explained, there is also the benefit that pool participants will receive financial statements for the pool's first fiscal year.

The Commission continues to believe there will be no net benefit from the Amendments as compared to Regulations 4.22(d)(2) and 4.22(g) prior to the Amendments with respect to financial disclosures. By codifying exemptions previously provided by Commission staff on a case-by-case basis, the Amendments continue to assist pool participants by providing them the information necessary to assess the overall trading performance and financial condition of their pool, but with a lower overall burden to certain CPOs. Pool participants are knowledgeable enough to evaluate financial statements prepared under principles, standards or practices established in the U.K., Ireland,

Luxembourg or Canada, provided that the relevant accounting principles, standards or practices are properly disclosed to them. While the Commission sought public comment concerning whether or not use of the specified different systems of accounting principles, standards and practices might lead to material differences in financial statements that pool participants might not be able to understand, the Commission did not receive any comments in response. Nor did the Commission receive any comments responding to its belief that, if it were to adopt the Proposal, there would be minimal loss in the level of confidence of pool participants in their pool's financial statements, because an independent public accountant will still have to issue an opinion on an audited Annual Report that combines information for the pool's first (partial-year) fiscal year with information for the following, first twelve-month fiscal year.

### 4. Section 15(a) Factors

As noted above, Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation or issuing certain orders. As also noted above, CEA Section 15(a) further specifies that the Commission shall evaluate the costs and benefits of its actions in light of five specific concerns. Those concerns relate to: (i) Protection of market participants and the public; (ii) efficiency, competitiveness, and financial integrity of futures markets; (iii) price discovery; (iv) sound risk management practices; and (v) other public interest considerations.

#### i. Protection of Market Participants and the Public

The Commission believes that the Amendments will provide the same level of protection to commodity pool participants through the disclosure of financial statements as do existing Regulations 4.22(d)(2) and 4.22(g). The Commission believes that pool participants are knowledgeable enough to evaluate financial statements prepared under accounting principles, standards and practices established in the U.K., Ireland, Luxembourg or Canada, provided that the relevant accounting principles, standards and practices are properly disclosed to them. By codifying exemptions previously provided by Commission staff on a case-by-case basis, the Amendments continue to assist pool participants by providing them the information necessary to assess the overall trading performance and financial condition of their pool, but with a lower overall

burden to certain CPOs. Additionally, the Commission believes that there will be minimal loss in the level of confidence of pool participants in their pool's financial statements, because an independent public accountant will still have to issue an opinion on the financial statements included in an Annual Report that combines information for the pool's first (partial-year) fiscal year with information for the following, first twelve-month fiscal year. Relief from the audit requirement where all pool participants are insiders is balanced by the close relationship between those insiders and the operation of the pool.

#### ii. Efficiency, Competitiveness, and Financial Integrity of Markets

The Commission does not believe there are any significant impacts that the Amendments will have on efficiency, competitiveness, and financial integrity of markets.

#### iii. Price Discovery

The Commission does not believe there are any significant impacts that the Amendments will have on price discovery.

#### iv. Sound Risk Management Practices

The Commission does not believe there are any significant impacts that the Amendments will have on sound risk management practices.

#### v. Other Public Interest Considerations

The Commission has not identified any impact on any other public interest considerations that the Amendments will have.

### 5. Summary of Comments

The Commission invited public comment on its cost-benefit considerations, including the Section 15(a) factors described above. Commenters were invited to submit with their comment letters any data or other information that they had that quantified or qualified the costs and benefits of the Proposal. None of the persons who commented on the Proposal submitted any data or other information that quantified or qualified the costs and benefits of the Proposal, nor did they otherwise comment on the cost-benefit considerations as stated in the Proposal.

#### List of Subjects in 17 CFR Part 4

Advertising, Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Reporting and recordkeeping requirements.

<sup>41</sup> See MFA comment letter.

For the reasons set forth in the preamble, the Commodity Futures Trading Commission hereby amends 17 CFR part 4 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, 6(c), 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

■ 2. Amend § 4.7 by revising paragraph (b)(2)(v) to read as follows:

**§ 4.7 Exemption from certain part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.**

\* \* \* \* \*

(b) \* \* \*  
(2) \* \* \*

(v) A commodity pool operator of a pool that meets the conditions specified in § 4.22(d)(2)(i) to present and compute the commodity pool's financial statements contained in the Annual Report other than in accordance with generally accepted accounting principles and has filed notice pursuant to § 4.22(d)(2)(iii) may also use the alternative accounting principles, standards or practices identified in the notice with respect to the computation and presentation of the account statement.

\* \* \* \* \*

■ 3. Amend § 4.22 as follows:

- a. Revise paragraphs (a)(6), (c)(7)(iii), (d)(1) introductory text, and (d)(2);
- b. Revise paragraph (g)(2).

The revisions to read as follows:

**§ 4.22 Reporting to pool participants.**

\* \* \* \* \*

(a) \* \* \*

(6) A commodity pool operator of a pool that meets the conditions specified in paragraph (d)(2)(i) of this section and has filed notice pursuant to paragraph (d)(2)(iii) of this section may elect to follow the same accounting treatment with respect to the computation and presentation of the account statement.

\* \* \* \* \*

(c) \* \* \*  
(7) \* \* \*

(iii) A report filed pursuant to paragraph (c)(7) of this section that would otherwise be required by paragraph (c) of this section is not required to be audited in accordance with paragraph (d) of this section if the commodity pool operator:

(A) Obtains a written waiver of their right to receive an audited Annual

Report from each participant other than the pool operator, the pool's commodity trading advisor, any person controlling, controlled by, or under common control with the pool operator or trading advisor, and any principal of the foregoing; and

(B) At the time of filing the Annual Report with the National Futures Association, certifies that it has received a written waiver from each participant from whom it is required to obtain a waiver to qualify for the relief available under this paragraph (c)(7). The commodity pool operator must maintain the waivers in accordance with § 4.23 and must make the waivers available to the Commission or National Futures Association upon request. Notwithstanding the provisions of paragraph (g)(2)(ii) of this section, the relief made available by this paragraph (c)(7)(iii) will not be available where the commodity pool operator has not previously distributed an audited Annual Report to pool participants and submitted an audited Annual Report to the National Futures Association.

\* \* \* \* \*

(d)(1) Subject to the provisions of paragraphs (d)(2) and (g)(2) of this section, the financial statements in the Annual Report required by this section or by § 4.7(b)(3) must be presented and computed in accordance with United States generally accepted accounting principles consistently applied and must be audited by an independent public accountant; *Provided, however*, and subject to the exception in paragraph (c)(7)(iii)(B) of this section, that the requirement that the Annual Report be audited by an independent public accountant does not apply for any fiscal year during which the only participants in the pool are one or more of the pool operator, the pool's commodity trading advisor, any person controlling, controlled by, or under common control with the pool operator or trading advisor, and any principal of the foregoing; and *Provided further*, that the CPO obtains a written waiver from each such pool participant of their right to receive an audited Annual Report for such fiscal year, maintains such waivers in accordance with § 4.23, and makes such waivers available to the Commission or National Futures Association upon request. The requirements of § 1.16(g) of this chapter shall apply with respect to the engagement of such independent public accountants, except that any related notifications to be made may be made solely to the National Futures Association, and the certification must be in accordance with § 1.16 of this

chapter, except that the following requirements of that section shall not apply:

\* \* \* \* \*

(2)(i) Where a commodity pool is organized in a jurisdiction other than the United States, the financial statements in the Annual Report required by this section or by § 4.7(b)(3) may be presented and computed in accordance with the generally accepted accounting principles, standards or practices followed in such other jurisdiction; *Provided, That:*

(A) The other jurisdiction follows accounting principles, standards or practices set forth in paragraph (d)(2)(ii) of this section and the Annual Report presents and computes the financial statements of the pool in accordance with the applicable accounting principles, standards or practices followed by such other jurisdiction;

(B) The Annual Report includes a condensed schedule of investments, or, if required by the applicable accounting principles, standards or practices followed by such other jurisdiction, a full schedule of investments;

(C) The Annual Report reports special allocations of ownership equity in accordance with paragraph (e)(2) of this section;

(D) The Disclosure Document or offering memorandum for the pool identifies the accounting principles, standards or practices of the other jurisdiction pursuant to which the Annual Report presents and computes the financial statements of the pool; and

(E) Where the accounting principles, standards or practices of the other jurisdiction require consolidated financial statements for the pool, such as a feeder fund consolidating with its master fund, all applicable disclosures required by United States generally accepted accounting principles for the feeder fund must be presented with the reporting pool's consolidated financial statements.

(ii) For purposes of paragraph (d)(2)(i) of this section, the following alternative accounting principles, standards or practices may be employed in the preparation and computation of the financial statements in the Annual Report of the commodity pool; *Provided, That* any such alternative accounting principles, standards or practices so employed are those followed by the jurisdiction other than the United States in which the commodity pool is organized:

(A) International Financial Reporting Standards;

(B) Generally Accepted Accounting Practice in the United Kingdom;



(C) New Irish Generally Accepted Accounting Practice;

(D) Luxembourg Generally Accepted Accounting Principles; or

(E) Canadian Generally Accepted Accounting Principles.

(iii) To claim the relief available under this paragraph (d)(2), a commodity pool operator must file a notice with the National Futures Association within 90 calendar days after the end of the pool's first fiscal year.

(A) The notice must contain: The name, main business address, main telephone number and National Futures Association registration identification number of the commodity pool operator; the name and identification number of the commodity pool for which the pool operator is claiming relief; and the alternative accounting principles, standards or practices pursuant to which the financial statements in the Annual Report will be presented and computed;

(B) The notice must include a representation that the commodity pool operator complies with each of the conditions specified in paragraphs (d)(2)(i)(A) through (D) of this section and, if applicable, paragraph (d)(2)(i)(E) of this section; and

(C) The notice must be signed by the commodity pool operator in accordance with paragraph (h) of this section.

\* \* \* \* \*

(g) \* \* \*

(2)(i) If a commodity pool operator elects a fiscal year other than the calendar year, it must give written notice of the election to all participants and must file the notice with the National Futures Association within 90 calendar days after the date of the pool's formation. If this notice is not given, the pool operator will be deemed to have elected the calendar year as the pool's fiscal year.

(ii) For purposes of this paragraph (g)(2), the time period from the date on which the commodity pool operator first receives funds, securities or other property from a participant in the pool that is not a person listed in paragraphs (g)(2)(ii)(A)(1) through (g)(2)(ii)(A)(5) of this section to the end of the pool's first fiscal year is the stub period of the pool. Where the stub period is four months or less, the first Annual Report for the pool may be unaudited; *Provided, however*, That:

(A) Throughout the stub period, the pool had no more than fifteen participants and no more than \$3,000,000 in aggregate gross capital contributions. For the purpose of satisfying these criteria, the commodity

pool operator may exclude the following persons and their contributions:

(1) The pool operator, the pool's commodity trading advisor, any person controlling, controlled by, or under common control with the pool operator or trading advisor, and any principal of the foregoing;

(2) A child, sibling, or parent of any of these participants;

(3) The spouse of any participant specified in paragraph (g)(2)(ii)(A)(1) or (2) of this section;

(4) Any relative of a participant specified in paragraph (g)(2)(ii)(A)(1), (2) or (3) of this section, their spouse or a relative of their spouse, who has the same principal residence as such participant; and

(5) An entity that is wholly-owned by one or more participants specified in paragraph (g)(2)(ii)(A)(1), (2), (3) or (4) of this section; and

(B) The next Annual Report for the pool is audited and covers the stub period plus the pool's first 12-month fiscal year.

(C) To claim the relief available under paragraph (g)(2)(ii) of this section, a commodity pool operator must:

(1) Prior to the date upon which it is required to distribute and submit an audited Annual Report for the pool's first fiscal year, obtain a written waiver of the pool participant's right to receive an audited Annual Report for the pool's first fiscal year from each participant other than a participant who is the pool operator, the pool's commodity trading advisor, any person controlling, controlled by, or under common control with the pool operator or trading advisor, or any principal of the foregoing. The waiver may be included in the subscription agreement for the pool or other agreement with the participant; *Provided, however*, That the waiver is a separate page in the agreement and the pool operator requires the participant to separately sign and date it. The waiver must be in a form substantially as follows: "[Name of participant], a participant in [Name of pool], voluntarily waives the right under CFTC Regulation 4.22(d) to receive an audited Annual Report for the fiscal year ended [end date of the pool's first fiscal year] and will accept in lieu thereof an unaudited Annual Report covering [the stub period] and an audited Annual Report covering [the start date of the stub period] through [the end date of the pool's first twelve-month fiscal year]."; and

(2) On or before the date upon which it is required to distribute and submit the Annual Report for the pool's first fiscal year, file a notice with the National Futures Association, along

with a certification that it has received the required written waiver from each participant who is not the pool operator, the pool's commodity trading advisor, any person controlling, controlled by, or under common control with the pool operator or trading advisor, or any principal of the foregoing, and who has been a participant in the pool for its first fiscal year.

(i) The notice must contain: The name, main business address, main telephone number and National Futures Association registration identification number of the commodity pool operator; the name and identification number of the commodity pool for which the pool operator is claiming relief; and the beginning and end dates of the stub period of the pool;

(ii) The notice must include a representation that the commodity pool operator meets the criteria of paragraph (g)(2)(ii)(A) of this section and that it will comply with the condition of paragraph (g)(2)(ii)(B) of this section; and

(iii) The notice must be signed by the commodity pool operator in accordance with paragraph (h) of this section.

(D)(1) Each unaudited Annual Report for which the relief available under paragraph (g)(2)(ii) of this section has been claimed must prominently disclose on the cover page thereof: "Pursuant to an exemption from the Commodity Futures Trading Commission, this unaudited Annual Report covers the period from [beginning date of the stub period of the pool] to the end of the pool's first fiscal year, a period of [number] months."

(2) The next Annual Report for the pool must prominently disclose on the cover page thereof: "Pursuant to an exemption from the Commodity Futures Trading Commission, this audited Annual Report covers the period from [beginning date of the stub period of the pool] to the end of the pool's first 12-month fiscal year, a period of [number] months."

(E) The commodity pool operator must maintain in accordance with § 4.23 of this chapter each waiver it has obtained to claim the relief available under paragraph (g)(2)(ii) of this section.

\* \* \* \* \*

\* \* \* \* \*

■ 4. Amend § 4.27 by revising paragraph (c)(2) to read as follows:

**§ 4.27 Additional reporting by advisors of certain commodity pools.**

\* \* \* \* \*

(c) \* \* \*

(2) All financial information shall be reported in accordance with generally

accepted accounting principles consistently applied. Notwithstanding the foregoing, or anything in the instructions to appendix A of this part to the contrary, a commodity pool operator of a pool that meets the conditions specified in § 4.22(d)(2)(i) to present and compute the commodity pool's financial statements contained in the Annual Report other than in accordance with United States generally accepted accounting principles and has filed notice pursuant to § 4.22(d)(2)(iii) may also use the alternative accounting principles, standards or practices identified in the notice in reporting information required to be reported pursuant to paragraph (c)(1) of this section.

\* \* \* \* \*

Issued in Washington, DC, on November 21, 2016, by the Commission.

**Robert N. Sidman,**

*Deputy Secretary of the Commission.*

**Note:** The following appendix will not appear in the Code of Federal Regulations.

#### Appendix to Commodity Pool Operator Financial Reports—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2016-28388 Filed 11-23-16; 8:45 am]

BILLING CODE 6351-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 101

[Docket No. FDA-2000-N-0011]

#### Uniform Compliance Date for Food Labeling Regulations

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA or we) is establishing January 1, 2020, as the uniform compliance date for food labeling regulations that are issued between January 1, 2017, and December 31, 2018. We periodically announce uniform compliance dates for new food labeling requirements to minimize the economic impact of label changes.

**DATES:** This rule is effective November 25, 2016. Submit electronic or written comments by January 24, 2017.

**ADDRESSES:** You may submit comments as follows:

#### Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov/>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov/> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov/>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand delivery/Courier (for written/paper submissions):** Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

**Instructions:** All submissions received must include the Docket No. FDA-2000-N-0011 for "Uniform Compliance Date for Food Labeling Regulations." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov/> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the

information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov/>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov/> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Philip L. Chao, Center for Food Safety and Applied Nutrition (HFS-24), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-2112.

**SUPPLEMENTARY INFORMATION:** We periodically issue regulations requiring changes in the labeling of food. If the effective dates of these labeling changes were not coordinated, the cumulative economic impact on the food industry of having to respond separately to each change would be substantial. Therefore, we periodically have announced uniform compliance dates for new food labeling requirements (see, e.g., the **Federal Register** of October 19, 1984 (49 FR 41019); December 24, 1996 (61 FR 67710); December 27, 1996 (61 FR 68145); December 23, 1998 (63 FR 71015); November 20, 2000 (65 FR 69666); December 31, 2002 (67 FR 79851); December 21, 2006 (71 FR 76599); December 8, 2008 (73 FR 74349); December 15, 2010 (75 FR 78155); November 28, 2012 (77 FR