tank, engine flameout, and a subsequent forced landing.

DATES: Effective April 5, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 5, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 5000 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9797, telephone 1–800–388–3378 or 480–891–6342, fax 480–891–6782. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (310) 627–5265; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to MDHI Model MD600N helicopters was published in the **Federal Register** on December 8, 1999 (64 FR 68646). That action proposed to require inspecting each internal fuel hose connection to verify proper installation.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 40 helicopters of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,200.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 2000–04–21 MD Helicopters, Inc.: Amendment 39–11604. Docket No. 99–SW–54–AD.

Applicability: Model MD600N helicopters, serial numbers with a prefix of ''RN'' 003 through 045, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel starvation of the engine while the fuel gage indicates fuel remaining in the tank, engine flameout, and a subsequent forced landing, accomplish the following:

(a) Within 100 hours time-in-service, verify that the internal fuel hose connections have been properly installed in accordance with either Method A or Method B of the Accomplishment Instructions of MD Helicopters Service Bulletin SB 600N–025, dated July 2, 1999. Prior to further flight, make any necessary corrections.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) The inspections shall be done in accordance with either Method A or Method B of the Accomplishment Instructions of MD Helicopters Service Bulletin SB 600N–025, dated July 2, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 5000 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9797, telephone 1–800–388–3378 or 480–891–6342, fax 480–891–6782. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 5, 2000.

Issued in Fort Worth, Texas, on February 22, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–4795 Filed 2–29–00; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

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

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing to amend Rule 4.5 by adding a plan defined as a church plan in Section 3(33) of Title I of the Employee Retirement Income Security Act of 1974 (''ERISA'')[1] (''Church Plan'') to the employee benefit plans that the rule currently provides shall not be construed to be commodity pools. The CFTC also is proposing certain technical conforming amendments to the existing paragraphs under Rule 4.5 to which this amendment would be added.

DATES: Comments on the proposed rule change must be received by March 31, 2000.

ADDRESSES: Comments on the proposed rule should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, N.W., Washington, DC, 20581. Comments may be sent by facsimile transmission to (202) 418–5528, or by e-mail to *secretary@cftc.gov*. Reference should be made to ''Proposed Amendment to Rule 4.5 for Church Plans.''

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

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 4.5

The term ''commodity pool operator'' (''CPO'') is defined in section 1a(4) of the Commodity Exchange Act, as amended, (the ''Act'')[2] to mean:

> Any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market, except that the term does not include such persons not within the intent of the definition of the term as the Commission may specify by rule, regulation, or order.

Section 4m(1) of the Act[3] makes it unlawful for any person to engage in business as a CPO without being registered as such. Part 4 of the Commission's regulations[4] governs the operations and activities of CPOs, through specific operational, disclosure, reporting and recordkeeping requirements set forth in Subpart B thereof.[5] In particular, Rule 4.10(d)(1) defines the term ''pool'' to mean ''any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.''[6]

In connection with the adoption of the Futures Trading Act of 1982,[7] the Senate Committee on Agriculture, Nutrition, and Forestry (the ''Committee'') considered an amendment to the Act that would have exempted certain persons from the CPO definition. In lieu of adopting such an amendment to the CPO definition, the Committee directed the Commission to issue regulations that would have the effect of providing relief from regulation as a CPO for certain otherwise regulated persons.[8] Pursuant to this directive, in 1985 the Commission adopted Rule 4.5.[9]

Rule 4.5 makes available an exclusion from the definition of the term ''commodity pool operator'' to certain ''eligible persons'' with respect to their operation of ''qualifying entities'' as follows: investment companies registered as such under the Investment Company Act of 1940; state-regulated insurance companies with respect to their operation of separate accounts; state-or federally-regulated financial depository institutions with respect to their operation of separate units of investment; and trustees, named fiduciaries and employers of pension plans subject to Title I of ERISA with respect to their operation of such plans.[10] To claim relief under Rule 4.5, an eligible person must file a notice of eligibility with the National Futures Association and the CFTC, which notice must contain specified identifying information and operating representations, *e.g.,* that the qualifying entity will: (1) Use commodity interests solely for *bona fide* hedging purposes provided, that in addition, with respect to speculative positions, it will not commit more than five percent of its assets to establish such positions; and (2) submit to special calls from the CFTC to demonstrate compliance with the operating criteria set forth in Rule 4.5.[11]

Rule 4.5 further provides that certain pension plans are not commodity pools and, thus, no notice needs to be filed and no operating criteria need to be followed for exclusionary relief to be available.[12] Specifically, Rule 4.5(a)(4) states:

> That for purposes of this § 4.5 the following employee benefit plans shall not be construed to be pools:
>
> (i) A noncontributory plan, whether defined benefit or defined contribution, covered under title I of the Employee Retirement Income Security Act of 1974;
>
> (ii) A contributory defined benefit plan covered under title IV of the Employee

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

[2] 7 U.S.C. 1a(4) (1994).

[3] 7 U.S.C. 6m(1) (1994).

[4] 17 CFR Ch. I, Part 4 (1999).

[5] See Rules 4.20 through 4.26. Part 4 similarly governs the operations and activities of commodity trading advisors (''CTAs''). See Rules 4.30 through 4.36.

[6] The term ''commodity interest'' is defined in Rule 4.10(a) to mean:

(1) Any contract for the purchase or sale of a commodity for future delivery; and

(2) Any contract, agreement or transactions subject to Commission regulation under section 4c or 19 of the Act.

[7] Pub. L. No. 97–444, 96 Stat. 2294 *et seq.* (1983).

[8] See S. Rep. No. 384, 97th Cong., 2d Sess. 79–80 (1982). Specifically, the Committee Report states:

> The Committee beleives, consistent with the amendment offered by Chairman Helms, that certain entities are not within the intent of the definition of the term 'commodity pool operator', as that term is defined in the Act, unless these entities have other attributes or features which would warrant their regulation as a commodity pool operator. Specifically, an entity regulated under the Investment Company Act of 1940 or an insurance company or a bank or trust company acting in its fiduciary capacity and subject to regulation by any state or the United States could ordinarily be excluded from the definition of the term 'commodity pool operator,' provided that (1) the entity uses commodity futures contracts or options thereon solely for hedging purposes; (2) initial margin requirements or premiums for such futures or options contracts will never be in excess of 5 percent of the fair market value of the entity's assets (in the case of an investment company) or of the assets of any trust, custodial account or other separate unit of investment for which the entity is acting as a fiduciary; (3) the entity has not been and will not be, marketing participations to the public as or in a commodity pool or otherwise as or in a vehicle for trading in the commodities markets; and (4) the entity will disclose to each prospective participant the purpose of and limitations on the scope of the commodity futures or commodity option trading it conducts for such participants.
>
> Also, a defined benefit plan that is subject to the provisions of the Employee Retirement Income Security Act of 1974 (ERISA) and is insured by the Pension Benefit Guaranty Corporation, or any fiduciary thereof, ordinarily could be excluded from the definition of the term ''commodity pool operator'', provided that its commodity futures (or options on futures) trading activity is solely incidental to the conduct of its business as such a plan or as a fiduciary thereof. The Committee understands that such a plan and its fiduciaries are subject to extensive regulation under ERISA. Therefore, while the Commission should retain discretion in this area, the Committee believes that, unless otherwise inappropriate, exemption by rule, regulation, or order from commodity pool operator registration and related requirements, other than antifraud provisions, should generally be granted to these classes of entities.

[9] 50 FR 15868 (Apr. 23, 1985); amended 58 FR 6371 (Jan. 28, 1993); 58 FR 43791 (Aug. 18, 1993).

[10] Rules 4.5(a) and (b).

[11] Rules 4.5(c) through (f).

[12] The operators of these ''non-pools,'' then, are not subject to Rules 4.5(c) through (f).

Retirement Income Security Act of 1974; *Provided, however,* That with respect to any such plan to which an employee may voluntarily contribute, no portion of an employee's contribution is committed as margin or premiums for futures or options contracts; and

(iii) A plan defined as a governmental plan in section 3(32) of title I of the Employee Retirement Income Security Act of 1974.

(iv) Any employee welfare benefit plan that is subject to the fiduciary responsibility provisions of the Employee Retirement Income Security Act of 1974.

With respect to Rule 4.5(a)(4)(iii) in particular, it should be noted that these governmental plans are exempted from Titles I and IV of ERISA,[13] which concern, respectively, the protection of employee rights (*e.g.,* disclosure and reporting) and the fiduciary responsibility provisions of ERISA. In adopting Rule 4.5(a)(4)(iii) the Commission stated that—

[it] agrees with those commenters who contended that governmental pension plans are not appropriate subjects for regulation and, therefore, that they need not qualify for any exclusion from such regulation. As was stated in connection with excluding such plans from coverage under ERISA:

State and local governments must be allowed to make their own determination of the best method to protect the pension rights of municipal employees. These are questions of state and local sovereignty and the Federal government should not interfere.[14]

B. Church Plans

Section 3(33)(A) of ERISA defines the term ''church plan'' to mean ''a plan established and maintained * * * by a church or by a convention or association of churches which is exempt from tax under section 501 of title 26.'' [15] However, a plan that is a Church Plan is exempted from Titles I and IV of ERISA, provided that the Church Plan does not elect under Section 410(d) of Title 26 [16] to be subject to certain provisions of ERISA from which it is otherwise exempt—*e.g.,* participation, vesting and funding provisions. The purpose of this exemption was ''to avoid excessive Government entanglement with religion in violation of the First Amendment to the Constitution.'' [17] In drafting ERISA, ''Congress recognized that there were serious Constitutional objections to subjecting the churches, through their plans, to the examination of books and records and possible levy on church property to satisfy plan liabilities. As a consequence, 'church plans' were excluded from the purview of ERISA.'' [18]

As stated above, Rule 4.5(a)(4) makes an exclusion from the CPO definition available to the operators of pension plans that are subject to Title I of ERISA. Church Plans, however, are not so subject. As also stated above, Rules 4.5(a)(4)(i) through (iv) provide that certain pension plans shall not be deemed to be commodity pools—*e.g.,* a plan defined as a ''governmental plan'' in Section 3(32) of ERISA—but these rules do not provide for Church Plans. Thus, under existing Rule 4.5 the operators of Church Plans are not among the eligible persons who may claim an exclusion from the CPO definition and Church Plans are not among the pension plans that are deemed not to be commodity pools.

II. The Proposed Amendments to Rule 4.5

A. The Substantive Amendment: Church Plans Deemed Not To Be Commodity Pools

In connection with its adoption of Rule 4.5 the Commission stated:

Whether any other pension plan not specified in § 4.5 merits such relief as the rule provides, or any other regulatory relief, remains to be determined on a case-by-case basis in light of the facts particular to such plan—*e.g.,* whether, and to what extent, the operations of such plan are subject to other regulation. As explained above, the Commission intends that its staff shall issue such determinations. The Commission further intends that, as it gains experience in this area, it will reevaluate this aspect of the rule.[19]

Accordingly, after the adoption of Rule 4.5, Commission staff issued several CPO registration no-action letters to the operators of pension plans defined as Church Plans in response to requests for those positions.[20] Staff issued those letters based upon, among other things, the requesters' explanations, as stated above, of Congress' reasons for exempting Church Plans from Titles I and IV of ERISA in connection with its adoption of ERISA—*i.e.,* to avoid excessive Government entanglement in religion in violation of the First Amendment to the Constitution. As also stated above, Titles I and IV concern, respectively, the protection of employee rights (*e.g.,* disclosure and reporting) and fiduciary responsibility provisions of ERISA.

Commission staff subsequently has received further requests from the operators of other Church Plans for a no-action position with respect to CPO registration under Section 4m(1) of the Act.[21] In support of this no-action position, one of the requesters stated that in connection with the adoption of

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[13] 29 U.S.C. 1001 (1994 and Supp. III 1997)) and 1301 (1994), respectively.

[14] 50 FR 15868 at 15873, citing I Legislative History of the Employee Retirement Income Security Act of 1974, 97th Cong., 2d Sess. 224 (Comm. Print 1976).

[15] Specifically, Section 3(33)(A) of ERISA states:

The term ''church plan'' means a plan established and maintained (to the extent required in clause (ii) of subparagraph (B)) for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 of title 26.

Section 3(33)(B)(ii) of ERISA generally provides that a plan is not a ''church plan'' if less than substantially all of the individuals included in the plan are individuals described in Section 3(33)(A), set forth above, or in Section 3(33)(C), which provides in relevant part that:

(i) A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

(ii) The term employee of a church or a convention or association of churches includes—

(I) a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, regardless of the source of his compensation;

(II) an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 51 of title 26 and which is controlled by or associated with a church or a convention or association of churches; and

(III) an individual described in clause (v).

(iii) A church or a convention or association of churches which is exempt from tax under section 501 of title 26 shall be deemed the employer of any individual included as an employee under clause (ii).

(iv) An organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that Church or convention or association of churches.

26 U.S.C. 501(c) (1994) provides in relevant part that the following organizations are exempt from federal income taxation:

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes * * * no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided * * *) and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

[16] 26 U.S.C. 410(d) 1994).

[17] 124 Cong. Rec. 12,108 (1998).

[18] Hearings on S. 209, Etc. Before the Subcomm. on Private Pension Plans and Employee Fringe Benefits of the Senate Comm. on Finance, 96th Cong., 1st Sess. 364 (1979).

[19] 50 FR 15868 at 15873–74

[20] See, *e.g.,* Unpublished letter dated July 30, 1990; CFTC Staff Interpretative Letter No. 87–11, [1987–90 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,019 (December 4, 1987). In each letter the staff stated that it would not recommend enforcement action to the Commission if the operator of the Church Plan at issue did not register as a CPO under Section 4m(1) of the Act.

[21] Letters to the Director of the Division of Trading and Markets dated November 20, 1998 and July 11, 1997.

ERISA Congress expressed the concern that—

> the examinations of books and records that may be required in any particular case as part of the careful and responsible administration of the insurance system might be regarded as an unjustified invasion of the confidential relationship that is believed to be appropriate with regard to churches and their religious activities. Sen. Rep. 93–383, 93rd Cong., 2d Sess. 1974–3 C.B. Supp. 160.

This requester further noted that in connection with the adoption of the National Securities Markets Improvement Act of 1996,[22] Congress adopted new Section 3(c)(14) of the Investment Company Act of 1940 (''ICA''), which specifically provides that church plans are not investment companies under the ICA and therefore that they are not subject to registration under the ICA.[23]

While the issuance of another CPO registration no-action letter to the operator of a Church Plan would be consistent with past staff practice, the Commission believes at this time that this practice should be formalized through an amendment to Rule 4.5. As the Commission articulated in connection with its recent adoption of Rule 140.99, it now intends, to the extent practicable, to handle repetitive requests such as these through rulemaking.[24]

Accordingly, the Commission is proposing to amend Rule 4.5 by adding Church Plans to the existing employee benefit plans in Rule 4.5(a)(4) that ''shall not be construed to be pools,'' and for which no notice needs to be filed and no operating criteria need to be followed for exclusionary relief to be available. Specifically, the Commission is proposing to add a new Rule 4.5(a)(4)(v) that will contain this Church Plan exclusion. However, just as ERISA restricts the exclusion of Church Plans from coverage under Title I and Title IV of that statute to Church Plans with respect to which no election has been made under Section 410(d) of Title 26, proposed Rule 4.5(a)(4)(v) similarly would restrict its exclusion to Church Plans with respect to which no election has been made under Section 410(d).[25]

In making this proposal to include Church Plans among those employee benefit plans that shall not be construed to be pools under Rule 4.5(a)(4), the Commission notes that the basis for its action would be similar to its rationale for providing in Rule 4.5(a)(4)(iii) that state and local government pension plans shall not be construed to be pools. As stated above, Congress exempted from Titles I and IV of ERISA: (1) Governmental plans, to avoid Federal interference with these questions of state and local sovereignty; and (2) Church Plans, to avoid excessive Federal entanglement with religion in violation of the first amendment to the Constitution. The Commission further notes that the proposal would be broader than the CPO registration no-action positions that its staff previously has issued to the operators of Church Plans.[26] Also, under this proposal the operators of Church Plans would not need to file a Notice of Eligibility to claim relief and they would not need to restrict their Plans' activities to the operating criteria of Rule 4.5(c). The Commission believes the breadth of its proposal is appropriate in light of Congress' rationale in excluding Church Plans from coverage under Titles I and IV of ERISA. The Commission nonetheless requests comment on whether rather than adding Church Plans to the list of plans that should not be construed to be a pool as proposed, the Commission should include the operator of a Church Plan as an eligible person who may claim an exclusion from the CPO definition. The Commission also requests comment on whether relief under Rule 4.5 should be available solely to those Church Plans that have not made an election under Section 414(e) of the IRC to be subject to certain provision of ERISA.

B. The Technical Amendments: Conforming the Rule

When the Commission initially adopted Rule 4.5 there were three types of pension plans that Rule 4.5(a)(4) stated ''shall not be construed to be pools'': the plans set forth in paragraphs (a)(4)(i); (a)(4)(ii); and (a)(4)(iii) of the rule.[27] The Commission subsequently amended Rule 4.5 to add in new paragraph (a)(4)(iv) another type of pension plan that would not be construed to be a pool.[28] However, the Commission did not at that time concurrently conform the punctuation of the rule. Moreover, if the proposed substantive amendment to Rule 4.5 for Church Plans is adopted, the rule further will have to be amended to accommodate grammatically this new paragraph.

Accordingly, the Commission also is proposing certain technical, conforming amendments to Rule 4.5. Specifically, the Commission is proposing to amend Rule 4.5 by removing the word ''and'' at the end of existing paragraph (a)(4)(ii), by removing the period and adding a semi-colon at the end of existing paragraph (a)(4)(iii), and by removing the period and adding a semi-colon and the word ''and'' at the end of existing paragraph (a)(4)(iv). The text of each of the foregoing paragraphs under Rule 4.5 would remain intact.

III. Related Matters

A. Paperwork Reduction Act

When publishing proposed rules, the Paperwork Reduction Act of 1995 (the ''PRA'')[29] imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In

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

[23] 15 U.S.C. 80a–3(c)(14) (Supp. II 1996). Specifically, Section 3(c)(14) provides that a ''church plan'' described in Title 26 is not an investment company if: under any such plan, no part of the assets may be used for, or diverted to, purposes other than the exclusive benefits of plan participants or beneficiaries, or any company or account that is—

(A) established by a person that is eligible to establish and maintain such a plan under section 414(e) of title 26; and

(B) substantially all of the activities of which consist of—

(i) managing or holding assets contributed to such church plans or other assets which are permitted to be commingled with the assets of church plans under title 26; or

(ii) administering or providing benefits pursuant to church plans.

Section 414(e) of Title 26, generally defines the term ''church plan'' to mean a pension plan established and maintained (to the extent specified) by a church or by a convention or association of churches which is exempt from tax under Section 501 of the IRC. 26 U.S.C. 414(e) (1994).

[24] 63 FR 68175 at 68176 (December 10, 1998).

[25] As stated above, a Church Plan is exempted from Titles I and IV of ERISA, provided the Church Plan does not elect under Section 410(d) of Title 26 to be subject to certain provisions of ERISA from which it is otherwise exempt—*e.g.,* participation, vesting and funding provisions.

[26] If a collective investment vehicle (such as a Church Plan) is not Commodity pool, the oopeprator of the vehicle would not be a CPO. The operator would nonetheless be a person for all other purposes of the Act and CFTC rules—*e.g.,* it would be subject to the general antifraud provisions of section 4b of the Act, 7 U.S.C. 6b (1994), and to the large trader reporting requirements of Part 18 of the regulations. If a collective investment vehicle is a pool, in addition to being a person for the purposes of the Act and the rules, its operator would be a CPO subject to all provisions of the Act and Commission rules applicable to CPOs regardless of registration status—*e.g.,* to the special antifraud provisions for CPOs (and CTAs) in section 40 of the Act, 70 U.S.C. 6*o* (1994), the operational requirements for CPOs in Rule 4.20 and the advertising requirements for CPOs (and CTAs) in Rule 4.41.

In this regard, the Commission wishes to emphasize that the status of a collective investment vehicle as a pool or a ''non-pool'' does not affect the registration or Part 4 requirements of any CTA to the vehicle. But see Rule 4.14(a)(8), which makes available an exemption from CTA registration to certain registered investment advisers who, among other things, provide commodity interest trading advice to Rule 4.5 trading vehicles in a manner solely incidental to their business of providing securities advice to those vehicles.

[27] 50 FR 15868.

[28] 58 FR 43791.

[29] 44 U.S.C. 3501 *et seq.* (Supp. II 1996).

compliance with the PRA, the Commission previously has submitted Rule 4.5 in proposed form and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget has approved the collection of information of which this proposed rule is a part through September 30, 2001, OMB Control Number 3038–0005: Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants. While this proposed rule has no burden, the group of rules (3038–0005) of which it is a part has the following burden:

Average Burden Hours Per Response: 7.49.

Number of Respondents: 6,949.

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

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') [30] requires each federal agency to consider in the course of proposing substantive rules the effect of those rules on small entities. The definitions of small entities that the Commission has established for this purpose do not address the persons and qualifying entities set forth in Rule 4.5 because, by the very nature of the rule, the operations and activities of such persons and entities generally are regulated by Federal and State authorities other than the Commission. Assuming, arguendo, that church plans would be small entities for purposes of the RFA, the Commission believes that the proposed amendment to Rule 4.5 would not have a significant economic impact on them because it would not require the filing of a notice containing specified operating criteria with the Commission to claim the relief available under proposed Rule 4.5(a)(4)(v). Moreover, the Commission notes that the proposed amendment potentially would relieve a greater number of persons (*i.e.,* the operators of Church Plans) from the requirement to register as a CPO and from the disclosure, reporting and recordkeeping requirements applicable to registered CPOs.

Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to Section 3(a) of the RFA [31] that the proposed rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 4

Commodity pool operators, Commodity futures.

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

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

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

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

2. In § 4.5, in paragraph (a)(4) introductory text, the proviso text is republished and paragraph (a)(4) is proposed to be amended by removing the word ''and'' at the end of paragraph (a)(4)(ii), by removing the period and adding a semi-colon at the end of paragraph (a)(4)(iii), by removing the period and adding a semi-colon and the word ''and'' at the end of paragraph (a)(4)(iv), and by adding a new paragraph (a)(4)(v), to read as follows:

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

(a) * * *

(4) * * * *Provided, however*, That for purposes of this § 4.5 the following employee benefit plans shall not be construed to be pools:

* * * * *

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

* * * * *

Issued in Washington, DC on February 22, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–4747 Filed 2–29–00; 8:45 am]

BILLING CODE 6351–01–P

[30] 5 U.S.C. 601 *et seq.* (1994 and Supp. II 1996).

[31] 5 U.S.C. 605(b).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 127, 154, 155, 159, 164, and 183

46 CFR Parts 28, 30, 32, 34, 35, 38, 39, 54, 56, 58, 61, 63, 76, 77, 78, 92, 95, 96, 97, 105, 108, 109, 110, 111, 114, 119, 125, 151, 153, 154, 160, 161, 162, 163, 164, 170, 174, 175, 182, 190, 193, 195, and 199

[USCG–1999–5151]

RIN 2115–AF80

Update of Standards From the American Society for Testing and Materials (ASTM)

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On December 1, 1999, the Coast Guard published a direct final rule [64 FR 67170]. This rule notified the public of our intent to amend Titles 33 and 46, Code of Federal Regulations, to render current the standards incorporated by reference from ASTM. We have not received an adverse comment, or notice of intent to submit an adverse comment, objecting to this rule. Therefore, this rule will go into effect as scheduled.

DATES: The direct final rule is, as we said it would be, effective on February 29, 2000. The incorporation by reference of publications in this rule was approved by the Director of the Federal Register to be effective on February 29, 2000.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, call Ms. Janet Walton, Office of Standards, Evaluation and Development (G–MSR), U.S. Coast Guard, telephone 202–267–0257.

SUPPLEMENTARY INFORMATION:

Discussion of Comments

The Coast Guard received no comments in response to the direct final rule. Therefore, this rule will go into effect as scheduled.

Dated: February 24, 2000.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–4806 Filed 2–29–00; 8:45 am]

BILLING CODE 4910–15–U