

of the RFA do not apply to CPOs who do not meet those criteria. With respect to CTAs, the Commission has previously stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of the proposal.⁶⁷ The Commission believes that the rules it is adopting today will not place any burdens, whether new or additional, on CPOs and CTAs who would be affected hereunder. This is because these rules provide registration relief for more CPOs and CTAs and, for CPOs and CTAs who are not eligible for that relief, they reduce, clarify, streamline and simplify existing requirements.

The Commission's definitions of small entities 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 Rule 4.5 eligible persons or qualifying entities would be small entities for purposes of the RFA, the Commission believes that the amendment to Rule 4.5 it is adopting today will not have a significant economic impact on them because it will permit greater operational flexibility for persons currently claiming relief under the rule, and it will make relief under the rule available to more persons (each of whom will only have to file a notice to be relieved from the requirement to register as a CPO and from the disclosure, reporting and recordkeeping requirements applicable to registered CPOs).

The Commission did not receive any comments on its analysis of the application of the RFA to the instant Part 4 rule amendments.

B. Paperwork Reduction Act

This rulemaking contains information collection requirements. As required by the Paperwork Reduction Act of 1995,⁶⁸ the Commission has submitted a copy of these amendments to part 4 to the Office of Management and Budget for its review. The Commission did not receive any public comments relative to its analysis of paperwork burdens associated with this rulemaking.

C. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs

and benefits of its action before issuing a new regulation under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

These amendments to the part 4 rules are intended to facilitate increased flexibility and consistency, and to rationalize application of Commission regulations to entities subject to other regulatory frameworks. The Commission is considering the costs and benefits of these rules in light of the specific provisions of section 15(a) of the Act:

1. *Protection of market participants and the public.* While certain of the amendments are expected to lessen the burden imposed upon CPOs and CTAs, any exclusion or exemption of persons from regulatory requirements are based on such factors as financial sophistication of pool participants and advisory clients or a limited level of trading in the commodity interest markets. Accordingly, the amendments should have no effect on the Commission's ability to protect market participants and the public. Also, there should be no decrease in the protection of market participants and the public where the amendments relax existing requirements under the Act and the Commission's rules in order to be consistent with existing requirements under the federal securities laws and the SEC's rules.

2. *Efficiency and competition.* The amendments are expected to benefit efficiency and competition by removing barriers to participation in the commodity interest markets, resulting in greater liquidity and market efficiency.

3. *Financial integrity of futures markets and price discovery.* The amendments should have no effect,

from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the commodity futures and options markets.

4. *Sound risk management practices.* The proposed amendments should increase the available range of risk management alternatives for Rule 4.5 eligible persons, as well as for CPOs and CTAs.

5. *Other public interest considerations.* The amendments also take into account certain effects of legislative changes (e.g., in the case of exemption for registered investment advisers) and the passage of time (e.g., revising the contribution limit for the small commodity pool exemption and permitting electronic delivery of pool Annual Reports and Account Statements).

After considering these factors, the Commission has determined to adopt the Part 4 rule amendments discussed above. The Commission did not receive any comments relative to its analysis of the cost-benefit provision.

D. Administrative Procedure Act

The Administrative Procedure Act provides that the required publication of a substantive rule shall be made not less than 30 days before its effective date, but provides an exception for "a substantive rule which grants or recognizes an exemption or relieves a restriction." Each of the amendments to Rules 4.5, 4.7, 4.12, 4.13, 4.14, 4.21, 4.22 and 4.31 the Commission is publishing today "grants or recognizes an exemption or relieves a restriction." Accordingly, the Commission has determined to make the amendments to Rules 4.5, 4.7, 4.12, 4.13, 4.14, 4.21, 4.22 and 4.31.

List of Subjects in 17 CFR Part 4

Advertising, Commodity pool operators, Commodity trading advisors, Commodity futures, Commodity options, Customer protection, Reporting and Recordkeeping.

■ For the reasons presented above, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

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

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

■ 2. Section 4.5 is amended by:

- a. Removing paragraph (c)(2)(i);
- b. Removing paragraph (c)(2)(ii);

⁶⁷ *Id.* at 18620.

⁶⁸ 44 U.S.C. 3507(d).