

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2010-1027; Airspace  
Docket No. 10-AGL-15]

**Amendment of Class E Airspace;  
Indianapolis Executive Airport, IN***Correction*

In rule document 2011-9404 appearing on pages 22013-22014 in the issue of Wednesday, April 20, 2011, make the following corrections:

**§ 71.1 [Corrected]**

- 1. On page 22014, in the second column, on the 4th line from the bottom of the page, "86°10'27" W" should read "86°10'27" W".
- 2. On the same page, in the third column, on the 4th line from the top of the page, "86°09'20" W" should read "86°09'20" W".

[FR Doc. C1-2011-9404 Filed 5-17-11; 8:45 am]

BILLING CODE 1505-01-D

**COMMODITY FUTURES TRADING  
COMMISSION****17 CFR Part 4**

RIN 3038-AC46

**Commodity Pool Operators: Relief  
From Compliance With Certain  
Disclosure, Reporting and  
Recordkeeping Requirements for  
Registered CPOs of Commodity Pools  
Listed for Trading on a National  
Securities Exchange; CPO Registration  
Exemption for Certain Independent  
Directors or Trustees of These  
Commodity Pools**

**AGENCY:** Commodity Futures Trading  
Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is adopting amendments to its regulations as they affect certain commodity pool operators (CPOs) of commodity pools whose units of participation are listed and traded on a national securities exchange (Amendments). Specifically, this action codifies the relief from certain disclosure, reporting, and recordkeeping requirements that Commission staff previously had issued to these CPOs on a case-by-case basis. It also codifies relief from the CPO registration requirement for certain independent directors or trustees of actively-managed

commodity pools that Commission staff similarly has issued.

**DATES:** *Effective date:* June 17, 2011.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****I. Background**

In order to make generally available the relief that Commission staff previously had issued on a case-by-case basis to individual CPOs of publicly-offered, exchange-listed pools, on September 9, 2010, the Commission published in the **Federal Register** proposed amendments to its Regulations 4.12 and 4.13<sup>1</sup> (Proposing Release).<sup>2</sup> The Proposing Release commenced by explaining the history and background of the regulation of CPOs by the Commission under the Commodity Exchange Act (Act)<sup>3</sup> and the background and development of various statutory and regulatory provisions granting relief from CPO regulation. With respect to this relief the Commission stated:

In implementing its statutory mandate to regulate the activities of CPOs, the Commission has endeavored to refine its regulations as appropriate to respond to changing market conditions in a manner consistent with customer protection. In addition to the issuance of relief by Commission staff on a case-by-case basis to facilitate application of regulatory requirements to new market conditions, the Commission has provided certain exemptions for registered CPOs from various of the requirements of Part 4 of its regulations, and where appropriate, it has provided exemptions from the CPO registration requirement itself.<sup>4</sup>

The Proposing Release then went on to discuss the relatively recent development of publicly-offered commodity pools with units of participation listed on a national

securities exchange (Commodity ETFs)<sup>5</sup> and to describe the numerous similar requests for relief from CPOs of Commodity ETFs that Commission staff had received, and to which they had favorably responded (Prior Relief Letters).<sup>6</sup> Because the requests for relief and the Prior Relief Letters the staff had issued in response thereto had become fairly standardized and routine, the Commission proposed to amend the relevant regulations so as to make the relief generally available to all CPOs who meet the requisite criteria.

Thus, the Commission proposed adding new paragraph (c) to Regulation 4.12 that, subject to specified conditions, would permit the CPO of a Commodity ETF to claim relief from the specific Disclosure Document delivery and acknowledgment requirements of Regulation 4.21, the monthly Account Statement delivery requirement of Regulation 4.22, and the requirement to keep the CPO's books and records at its main business address in Regulation 4.23. In addition, the Commission proposed, subject to certain conditions, to exempt from CPO registration an independent director or trustee of a Commodity ETF, where that person was required to serve as a director or trustee solely for purposes of constituting and maintaining the audit committee required for actively-managed public companies (including actively-managed Commodity ETFs) under provisions of the Sarbanes-Oxley Act of 2002<sup>7</sup> (and Securities and Exchange Commission rules and exchange listing requirements adopted pursuant thereto) by adding new paragraph (a)(5) to Regulation 4.13.

As the Proposing Release explained, then, the Commission's actions were intended to respond to financial market developments in the limited context of CPOs whose units of participation in the pools they operated were listed for trading on a national securities exchange.<sup>8</sup> The specific changes that the Commission proposed, as well as the rationale for those proposed changes, are set forth in the Proposing Release.<sup>9</sup>

In light of the generally favorable comments it received (discussed in Section II below), the Commission is adopting the Amendments essentially as proposed. In this regard, however, and

<sup>1</sup> 17 CFR 4.12 and 4.13. Commission regulations may be accessed through the Commission's Web site, at <http://www.cftc.gov>.

<sup>2</sup> 75 FR 54794.

<sup>3</sup> 7 U.S.C. 1 et seq. (2006), as amended by The Dodd Frank Wall Street Reform and Consumer Protection Act. Public Law 111-203, 124 Stat. 1376 (2010). The Act similarly may be accessed through the Commission's Web site.

<sup>4</sup> 75 FR 54794.

<sup>5</sup> See 75 FR 54794, at 54794-95. The Commission explained the origin and use of the term "Commodity ETF".

<sup>6</sup> *Id.* at 54795-96.

<sup>7</sup> Public Law 107-204, 116 Stat. 745, enacted July 30, 2002. See Section 10A(m) of the Securities Exchange Act of 1934 (Exchange Act), 78j-1(m) (2006), and Rule 10A-3 under the Exchange Act, 17 CFR 240.10A-3 (2010).

<sup>8</sup> 75 FR at 54795.

<sup>9</sup> See 75 FR at 54796-98.

as the Commission stated in the Proposing Release, it is important to note that:

[R]egardless of registration status, all persons who come within the CPO definition are subject to certain operational and advertising requirements under Part 4, to all other provisions of the Act and the Commission's regulations prohibiting fraud that apply to CPOs, and to all other relevant provisions of the Act and the Commission's regulations that apply to all commodity interest market participants, such as the general antifraud provisions, prohibitions against manipulations, and the trade reporting requirements.<sup>10</sup>

Accordingly, while the regulations being published by this **Federal Register** release provide an exemption from registration for certain CPOs, these persons nonetheless remain subject to the Commission's jurisdiction.

Consistent with past practice, in a separate document published elsewhere in today's **Federal Register**, the Commission is issuing a Notice and Order that authorizes the National Futures Association to process: (1) Claims of exemption from certain Part 4 requirements for CPOs with respect to Commodity ETFs; and (2) notices of exemption from registration as a CPO filed by independent directors or trustees of Commodity ETFs.

## II. The Comments on the Proposing Release

The Commission received five comment letters on the Proposing Release, as follows: Two from CPOs of Commodity ETFs; one from a registered futures association; one from a national securities exchange; and one from a bar association.<sup>11</sup> The commenters were uniformly in support of the amendments to the Commission's regulations set forth in the Proposing Release. In the words of the registered futures association, for example, the proposed amendments would "provide the appropriate relief without materially impacting customer protection," and they would serve as an appropriate modification of the Commission's existing requirements by "promot[ing] innovation in the marketplace." The national securities exchange provided similar comments, stating that the Proposing Release would "provide[] appropriate regulatory relief in response to the developing financial marketplace consistent with the goal of customer protection."

Commenters nonetheless requested certain clarifications and enhancements of the proposed amendments to the Commission's regulations.

### A. Clarification of Relief From the Disclosure Document Delivery and Acknowledgment Requirements of Regulation 4.21

Several commenters asked whether the Disclosure Document delivery and acknowledgment requirements would apply under proposed Regulation 4.12(c) in various circumstances, including: Secondary market transactions not involving a direct purchase from the CPO; secondary market transactions not involving an underwriter or distributor; sales or resales by Authorized Participants;<sup>12</sup> and purchases and resales of Commodity ETF shares by an underwriter or distributor.

As a general principle, the Commission believes that secondary market transactions to which a CPO or any person acting as the agent of the CPO is not a party do not trigger the requirement for the CPO to deliver a Disclosure Document or to obtain a signed acknowledgment of receipt.<sup>13</sup> For a CPO of a Commodity ETF who has claimed an exemption under Regulation 4.12(c), the Disclosure Document delivery and acknowledgment requirements also do not apply in the case of transactions involving Authorized Participants or transactions involving the underwriters or distributors (acting as the CPO's agents) of the Commodity ETF's securities offering. Nevertheless, the CPO claiming relief under Regulation 4.12(c) is obligated to keep the Commodity ETF's Disclosure Document current and posted on the CPO's Web site, regardless of whether the CPO of the Commodity ETF has characterized its pool as an "open-end" or "closed-end" fund.<sup>14</sup>

<sup>12</sup> In the case of many Commodity ETFs, one or more registered broker dealers (Authorized Participants) contract with the CPO to purchase or redeem large blocks of Commodity ETF units as necessary to ensure that the unit price and the Commodity ETF's net asset value do not diverge and create arbitrage opportunities. See e.g., CFTC Staff Letter 05-19 [2005-2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶30,164 (Nov. 10, 2005).

<sup>13</sup> See 44 FR 25658 (May 2, 1979), where in interpreting newly-adopted Regulation 4.21 the Commission stated:

The operator of a commodity pool is not required to provide a Disclosure Document [rule 4.21] to a person who purchases a unit of participation or interest in the pool from a pool participant if the pool operator did not solicit the purchase.

<sup>14</sup> See, e.g., CFTC Staff Letter 05-19 [2005-2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶30,164 (Nov. 10, 2005), where the CPO in making its request characterized its pool as an "open end" fund, and CFTC Staff Letter 10-06 [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶31,557 (Mar.

### B. Requirement To Clearly Inform Prospective Participants of the CPO's Internet Web Site

One commenter sought guidance on the requirement in proposed Regulation 4.12(c)(2)(i)(C) to "[c]learly inform prospective pool participants of the Internet address of such Web site" on which the CPO has posted the Commodity ETF's Disclosure Document. The commenter pointed out that, in the context of a pool whose shares are traded on a national securities exchange, the CPO typically does not know the identities of many prospective pool participants.

In response, the Commission has revised the text of Regulation 4.12(c)(2)(i)(C) to make clear that the CPO is required to clearly inform those prospective pool participants *with whom it has contact* of the Web site address. Additionally, and as proposed, the regulation requires the CPO to direct brokers, dealers and other selling agents to so inform prospective pool participants. Based on the representations made by the CPOs to whom the Prior Relief Letters were issued, and the Commission's understanding of the Federal securities laws applicable to the sale of publicly-offered, exchange-listed securities, the Commission expects that persons will purchase shares in a Commodity ETF through a registered broker or dealer.

### C. Request To Expand Relief From Regulation 4.22 To Include Annual Reports

Another commenter asked that the CPO of a Commodity ETF claiming relief under proposed Regulation 4.12(c) be permitted to satisfy the Annual Report requirement under Regulation 4.22(c) by providing the Commodity ETF's Form 10-K on the same Web site where the CPO makes available the Commodity ETF's Disclosure Document and monthly Account Statements.

The Commission did not include such an amendment to Regulation 4.22 in the Proposing Release, and it is not including one in the Amendments. This is because the Commission believes that the benefits to Commodity ETF participants of a familiar, standardized, certified, annual report of the Commodity ETF's financial condition outweigh the burden of, for example, ascertaining the names and addresses of participants at year-end and preparing and delivering the Annual Report (all of which the CPO has 90 days to accomplish). Accordingly, the CPO of a Commodity ETF claiming exemption

29, 2010), where the CPO characterized its pool as a "closed-end" fund.

<sup>10</sup> 75 FR 54794 (footnotes omitted).

<sup>11</sup> These comment letters are available on the Commission's Web site at: <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=761>.

under Regulation 4.12(c) remains subject to the Annual Report requirements of Regulation 4.22(c).<sup>15</sup>

*D. Filing Requirement for Statement by an Alternate Recordkeeper*

The Commission also received a comment recommending that instead of filing with the National Futures Association (NFA), as proposed, the statement required of an alternate recordkeeper by proposed Regulation 4.12(c)((2)(iii)(C), the CPO should be required “to maintain the statement as a business record and make it available to NFA” upon NFA’s request.

In response, the Commission notes that the statement, whereby an alternate recordkeeper acknowledges its role, agrees to carry it out in compliance with Regulation 1.31, and agrees to keep the records it keeps open to inspection by Commission or Department of Justice representatives and available to pool participants, is a pre-requisite and condition precedent to effectiveness of relief from Regulation 4.23. Moreover, if for some reason, the books and records kept at the CPO’s main business address are unavailable, the statement would be inaccessible as well. Accordingly, the Commission is retaining the filing requirement of Regulation 4.12(c)((2)(iii)(C).

*E. Clarification of Effect on Recipients of Prior Relief Letters*

In the Proposing Release the Commission stated that, after adoption of final regulations, a recipient of a Prior Relief Letter could continue to rely upon the Prior Relief Letter without taking any further action (such as filing a notice under Regulation 4.12(d)), so long as the requirements of the final regulations were no more restrictive than the requirements of the Prior Relief Letter to which the recipient was subject. One of the commenters asked for clarification of the words “no more restrictive.”

Inasmuch as the requirements of Regulations 4.12(c) and 4.13(a)(5) as adopted are no more restrictive than those of any of the Prior Relief Letters, by this **Federal Register** release the Commission confirms that each recipient of a Prior Relief Letter may continue to rely upon that letter without taking any further action. Nevertheless, and as the Commission stated in the Proposing Release:

[I]f the facts and representations upon which a Prior Relief Letter was based

materially change, the [recipient of that Prior Relief Letter] will be required to file a [n]otice under the final rule, or cease engaging in the activities that prompted the request for the Prior Relief Letter.<sup>16</sup>

**III. Related Matters**

*A. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA)<sup>17</sup> requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously 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 RFA.<sup>18</sup> With respect to CPOs, the Commission has previously determined that a CPO is a small entity if it meets the criteria for exemption from registration under current Regulation 4.13(a)(2).<sup>19</sup> Therefore, the requirements of the RFA do not apply to CPOs who do not meet those criteria. The Commission believes that the Amendments will not place any burdens, whether new or additional, on CPOs who would be affected hereunder. This is because the certain of the Amendments provide disclosure, reporting and recordkeeping relief for more CPOs, and another Amendment provides registration relief. The Commission did not receive any comments relative to its analysis of the RFA in the Proposing Release.

Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these regulations will not have a significant economic impact on a substantial number of small entities.

*B. Paperwork Reduction Act*

The final rule affects information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission has submitted a copy of this section to the Office of Management and Budget for its review. The information collection burdens created by the Commission’s proposed rules, which were discussed in detail in the Proposing Release, are identical to the collective information collection burdens of the final rules.

The Commission invited the public and other Federal agencies to comment on any aspect of the information collection requirements discussed above. The Commission received no comment on its burden estimates or on any other aspect of the information

collection requirements contained in its proposing release. The affected collection is Collection 3038–0005 (part 4 of the Commission’s regulations).

*C. Cost-Benefit Analysis*

Section 15(a) of the Act 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: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) 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.

The Commission has considered the costs and benefits of these new regulations in light of the specific provisions of Section 15(a) of the Act. The Commission has determined that the costs of the Amendments are not significant. While the Amendments are expected to lessen the burden that would otherwise be imposed upon CPOs of Commodity ETFs, market participants and members of the public will nonetheless be protected because any exemption of persons from regulatory requirements would be based on such factors as substituted compliance with other similar requirements. The Commission has determined that the benefits of the Amendments are substantial. The Amendments will promote efficiency in the markets by providing uniform standards for CPOs and by reducing duplicative regulation.

The Commission requested comment on its application of these factors in the Proposing Release. No such comments were received.

After considering the costs and benefits, the Commission has determined to adopt the Amendments.

<sup>15</sup> Regulation 4.22(c) sets forth the basic requirement for distribution of the Annual Report. Regulations 4.22(d) through (i) contain additional provisions concerning the Annual Report, all of which remain applicable to the CPO.

<sup>16</sup> 75 FR 54794, 54798.

<sup>17</sup> 5 U.S.C. 601 *et seq.*

<sup>18</sup> 47 FR 18618 (Apr. 30, 1982).

<sup>19</sup> *Id.* at 18619–20.

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

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

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, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a and 23

■ 2. Section 4.12 is amended by:

■ a. Revising the heading of paragraph (b);

■ b. Revising the introductory text of paragraph (b)(1);

■ c. Amending paragraph (b)(2) by adding a heading;

■ d. Redesignating paragraphs (b)(3) through (b)(6) as paragraphs (d)(1) through (d)(4) and revising newly redesignated paragraphs (d)(1) introductory text, (d)(1)(iii)(A), (d)(1)(iii)(B), (d)(1)(iv), and (d)(2)(ii); and

■ e. Adding new paragraph (c), to read as follows:

**§ 4.12 Exemption from provisions of part 4.**

\* \* \* \* \*

(b) *Exemption from Subpart B for certain commodity pool operators based on amount and nature of commodity interest trading.* (1) *Eligibility.* Subject to compliance with the provisions of paragraph (d) of this section, any person who is registered as a commodity pool operator, or has applied for such registration, may claim any or all of the relief available under paragraph (b)(2) of this section if:

\* \* \* \* \*

(2) *Relief available to pool operator.*

\* \* \* \* \*

(c) *Exemption from Subpart B for certain commodity pool operators based on listing of pool participation units for trading on a national securities exchange.* (1) *Eligibility.* Subject to compliance with the provisions of paragraph (d) of this section, any person who is registered as a commodity pool operator, or has applied for such registration, may claim any or all of the relief available under paragraph (c)(2) of this section if the units of participation in the pool for which it makes such claim:

(i) Will be offered and sold pursuant to an effective registration statement under the Securities Act of 1933; and

(ii) Will be listed for trading on a national securities exchange registered as such under the Securities Exchange Act of 1934.

(2) *Relief available to pool operator.* The commodity pool operator of a pool whose units of participation meet the criteria of paragraph (c)(1) of this section may claim the following relief:

(i) In the case of § 4.21, exemption from the Disclosure Document delivery and acknowledgment requirements of that section, *Provided, however*, that the pool operator:

(A) Cause the pool's Disclosure Document to be readily accessible on an Internet Web site maintained by the pool operator;

(B) Cause the Disclosure Document to be kept current in accordance with the requirements of § 4.26(a);

(C) Clearly inform prospective pool participants with whom it has contact of the Internet address of such Web site and direct any broker, dealer or other selling agent to whom the pool operator sells units of participation in the pool to so inform prospective pool participants; and

(D) Comply with all other requirements applicable to pool Disclosure Documents under Part 4. The pool operator may satisfy the requirement of § 4.26(b) to attach to the Disclosure Document a copy of the pool's most current Account Statement and Annual Report if the pool operator makes such Account Statement and Annual Report readily accessible on an Internet Web site maintained by the pool operator.

(ii) In the case of § 4.22, exemption from the Account Statement distribution requirement of that section; *Provided, however*, that the pool operator:

(A) Cause the pool's Account Statements, including the certification required by § 4.22(h), to be readily accessible on an Internet Web site maintained by the pool operator within 30 calendar days after the last day of the applicable reporting period and continuing for a period of not less than 30 calendar days; and

(B) Cause the Disclosure Document for the pool to clearly indicate:

(1) That the information required to be included in the Account Statements will be readily accessible on an Internet Web site maintained by the pool operator; and

(2) The Internet address of such Web site.

(iii) In the case of § 4.23, exemption from the requirement to keep the books and records specified by that section at

the pool operator's main business office; *Provided, however*, that:

(A) The books and records that the pool operator will not keep at its main business office will be maintained by one or more of the following: The pool's administrator, distributor or custodian, or a bank or registered broker or dealer acting in a similar capacity with respect to the pool;

(B) At the time it files electronically with the National Futures Association the notice required under paragraph (d) of this section, the pool operator files a statement that:

(1) Identifies the name, main business address, and main business telephone number of the person(s) who will be keeping required books and records *in lieu* of the pool operator;

(2) Sets forth the name and telephone number of a contact for each person who will be keeping required books and records *in lieu* of the pool operator;

(3) Specifies, by reference to the respective paragraph of § 4.23, the books and records that such person will be keeping; and

(4) Contains representations from the pool operator that:

(i) It will promptly amend the statement if the contact information or location of any of the books and records required to be kept by § 4.23 changes, by identifying in such amendment the new location and any other information that has changed;

(ii) It remains responsible for ensuring that all books and records required by § 4.23 are kept in accordance with § 1.31;

(iii) Within forty-eight hours after a request by a representative of the Commission, it will obtain the original books and records from the location at which they are maintained, and provide them for inspection at the pool operator's main business office; *Provided, however*, that if the original books and records are permitted to be, and are maintained, at a location outside the United States, its territories or possessions, the pool operator will obtain and provide such original books and records for inspection at the pool operator's main business office within seventy-two hours of such a request; and

(iv) It will disclose in the pool's Disclosure Document the location of its books and records that are required under § 4.23.

(C) At the time it files the notice required under paragraph (d) of this section, the pool operator files electronically with the National Futures Association a statement from each person who will be keeping required

books and records *in lieu* of the pool operator wherein such person:

(1) Acknowledges that the pool operator intends that the person keep and maintain required pool books and records;

(2) Agrees to keep and maintain such required books and records in accordance with § 1.31 of this chapter; and

(3) Agrees to keep such required books and records open to inspection by any representative of the Commission or the United States Justice Department in accordance with § 1.31 of this chapter and to make such required books and records available to pool participants in accordance with § 4.23 of this chapter.

\* \* \* \* \*

(d)(1) *Notice of claim for exemption.* Any registered commodity pool operator, or applicant for commodity pool operator registration, who desires to claim the relief available under paragraph (b) or (c) of this § 4.12 must file electronically a claim of exemption with the National Futures Association through its electronic exemption filing system. Such claim must:

\* \* \* \* \*

(iii) \* \* \*

(A) The pool will be operated in compliance with paragraph (b)(1)(i) of this section and the pool operator will comply with the requirements of paragraph (b)(1)(ii) of this section; or

(B) The pool will be operated in compliance with paragraph (c)(1) of this section;

(iv) Specify the relief sought under paragraph (b)(2) or (c)(2) of this section, as the case may be, and

\* \* \* \* \*

(2)(i) \* \* \*

(ii) The claim of exemption shall be effective upon filing; *Provided, however*, That any exemption claimed hereunder:

(A) Will not be effective unless and until the notice required by this paragraph (d) contains all information called for herein and any statements required under paragraph (c)(2)(iii) have been provided; and

(B) Will cease to be effective upon any change which would render the representations made pursuant to paragraph (d)(1)(iii) of this section inaccurate or the continuation of such representations false or misleading.

\* \* \* \* \*

■ 3. Section 4.13 is amended by:

■ a. Removing the word “or” at the end of paragraph (a)(3)(iv);

■ b. Removing the period at the end of paragraph (a)(4)(ii)(B) and adding “; or”;

■ c. Redesignating paragraph (a)(5) as paragraph (a)(6), and revising newly

redesignated paragraph (a)(6)(i)

introductory text;

■ d. Adding new paragraph (a)(5); and

■ e. Revising paragraphs (b)(1)(ii) and (b)(2), to read as follows:

#### § 4.13 Exemption from registration as a commodity pool operator.

\* \* \* \* \*

(a) \* \* \*

(5) The person is acting as a director or trustee with respect to a pool whose operator is registered as a commodity pool operator and is eligible to claim relief under § 4.12(c) of this chapter, *Provided, however*, that:

(i) The person acts in such capacity solely to comply with the requirements under section 10A of the Securities Exchange Act of 1934, as amended, and any Securities and Exchange Commission rules and exchange listing requirements adopted pursuant thereto, that the pool have an audit committee comprised exclusively of independent directors or trustees;

(ii) The person has no power or authority to manage or control the operations or activities of the pool except as necessary to comply with such requirement; and

(iii) The registered pool operator of the pool is and will be liable for any violation of the Act or the Commission's regulations by the person in connection with the person's serving as a director or trustee with respect to the pool.

(6)(i) Eligibility for exemption under paragraph (a)(1), (a)(2), (a)(3) or (a)(4) of this section is subject to the person furnishing in written communication physically delivered or delivered through electronic transmission to each prospective participant in the pool:

\* \* \*

\* \* \* \* \*

(b)(1) \* \* \*

(ii) Contain the section number pursuant to which the operator is filing the notice (i.e., § 4.13(a)(1), (a)(2), (a)(3), (a)(4) or (a)(5), or both (a)(3) and (a)(4)) and represent that the pool will be operated in accordance with the criteria of that paragraph or paragraphs; and

\* \* \* \* \*

(2) The person must file the notice by no later than the time that the pool operator delivers a subscription agreement for the pool to a prospective participant in the pool; *Provided, however*, that in the case of a claim for relief under § 4.13(a)(5), the person must file the notice by the later of the effective date of the pool's registration statement under the Securities Act of 1933 or the date on which the person first becomes a director or trustee; and *Provided, further*, that where a person registered with the Commission as a

commodity pool operator intends to withdraw from registration in order to claim exemption hereunder, the person must notify its pool's participants in written communication physically delivered or delivered through electronic transmission that it intends to withdraw from registration and claim the exemption, and it must provide each such participant with a right to redeem its interest in the pool prior to the person filing a notice of exemption from registration

\* \* \* \* \*

Issued in Washington, DC, on May 5, 2011, by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. 2011-11551 Filed 5-17-11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2011-0389]

#### Drawbridge Operation Regulation; Calcasieu River, Westlake, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Union Pacific Railroad swing bridge across the Calcasieu River, mile 36.4, at Westlake, Calcasieu Parish, Louisiana. The deviation is necessary to upgrade the electrical and mechanical systems of the bridge. This deviation allows the bridge to remain closed-to-navigation on five different dates in June.

**DATES:** This deviation is effective from 8 a.m. on Thursday, June 2, 2011, through 5 p.m. on Thursday, June 30, 2011.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG-2011-0389 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-0389 in the “Keyword” box and then clicking “Search.” They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.