

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: The MCAI and service bulletin require inspection A before the next flight and inspection B every 25 flight hours. We consider before the next flight as an urgent safety of flight compliance time, and we do not consider this unsafe condition to be an urgent safety of flight condition. Because we do not consider this unsafe condition to be an urgent safety of flight condition, we issued this action through the normal notice of proposed rulemaking (NPRM) AD process. The time of 50 hours TIS is an adequate compliance for this AD action and meets the FAA requirements of an NPRM.

Other FAA AD Provisions

(g) *The following provisions also apply to this AD:*

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; fax: (816) 329-4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(h) Refer to MCAI EASA AD No. F-2004-143, dated August 18, 2004; and Apex Aircraft Service Bulletin No. 040707, dated July 29, 2004, for related information.

Issued in Kansas City, Missouri, on March 27, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-6015 Filed 3-30-07; 8:45 am]

BILLING CODE 4910-13-P

COMMODITY FUTURES TRADING COMMISSION**17 CFR Parts 1, 3, 4, 15 and 166**

RIN 3038-AC26

Exemption From Registration for Certain Foreign Persons

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing to amend Commission Regulation 3.10 regarding the registration of firms located outside the U.S. that are engaged in commodity interest activities with respect to trading on U.S. designated contract markets ("DCMs") and U.S. derivative transaction execution facilities ("DTEFs").¹ The amended regulation would codify past actions of the Commission or its staff permitting certain foreign firms that limit their customers to foreign customers to submit U.S. DCM and DTEF business on behalf of those customers for clearing on an omnibus basis through a registered futures commission merchant ("FCM"), without the foreign firm having to register as an FCM pursuant to section 4d of the Commodity Exchange Act ("Act").

DATES: Comments must be received on or before May 2, 2007.

ADDRESSES: Comments may be submitted, identified by RIN 3038-AC26, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: secretary@cftc.gov. Include "Exemption from Registration for Certain Foreign Persons" in the subject line of the message.

- Fax: 202/418-5521.

- Mail or Courier: Send to Eileen A. Donovan, Acting Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW., Washington, DC 20581.

All comments received will be posted without change to <http://www.cftc.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

Lawrence B. Patent, Deputy Director, or Andrew V. Chapin, Special Counsel, at (202) 418-5430, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three

Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Electronic mail: 1patent@cftc.gov or achapin@cftc.gov.

SUPPLEMENTARY INFORMATION:**I. Background Information**

A. Registration Requirements for Commodity Interest Activities on U.S. Markets

Part 3 of the Commission's regulations governs the registration of intermediaries engaged in the offer and sale of, and providing advice concerning, futures and commodity options traded on U.S. markets, including both DCMs and DTEFs. In particular, Regulation 3.10 sets forth the manner in which FCMs, introducing brokers ("IBs"), commodity trading advisors ("CTAs"), commodity pool operators ("CPOs") and leverage transaction merchants must apply for registration with the Commission. Regulation 3.10(c) also provides an exemption from registration for certain persons. Currently, the only exemption from registration as an FCM is for any person trading solely for proprietary accounts, as defined in Regulation 1.3(y).

With respect to registration, the Act does not distinguish between an intermediary located within or outside the U.S., nor does that Act distinguish between a firm conducting commodity interest² activities on behalf of U.S. persons and those conducting such activities solely on behalf of persons located outside the U.S. For example, Section 1a(20) of the Act defines an FCM as a person that is

(A) Engaged in soliciting or accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility; and (B) in or in connection with such solicitation or acceptance of orders, accepts any money, securities or property (or extends credit in lieu thereof) for margin, guarantee, or secure any trades or contracts that result or may result therefrom.³

Section 4d(a) of the Act states that:

[I]t shall be unlawful for any person to engage as [an FCM] * * * in soliciting or accepting orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market or

² See discussion of proposed new Regulation 1.3(yy) defining the term "commodity interest," *infra*.

³ 7 U.S.C. 1a(20) (2000). See also Regulation 1.3(p). The definitions of CPO, CTA and IB similarly are applicable to transactions entered into on U.S. markets without regard to the location of the intermediary. See 7 U.S.C. 1a(5), (6) and (23), respectively.

¹ Commission regulations referred to herein are found at 17 CFR Ch. I (2006). References to trading on U.S. DCMs or DTEFs shall include trading that is subject to the rules of such entities as well.

derivatives transaction execution facility unless

(1) Such person shall have registered, under this Act, with the Commission as such [FCM] * * * and such registration shall not have expired nor been suspended nor revoked; * * *⁴

Accordingly a person located outside the U.S. engaged in FCM-type activity with respect to transactions entered into on a DCM or DTEF would be required to register as an FCM even though such person restricts its customer base to persons located outside of the U.S.

B. Foreign Broker Exemption

The term "foreign broker" never has been defined in the context of the Part 3 registration requirements. Rather, the term "foreign broker" has been defined solely in the context of the financial surveillance reporting requirements set forth in Parts 15 to 21 of the Commission's regulations. Specifically, Regulation 15.00(a)(1) defines "foreign broker" to mean "any person located outside the U.S. or its territories who carries an account in commodity futures or commodity options on any contract market for any other person." In various contexts, the Commission has indicated that it would not require registration of a foreign broker that (1) limits its customers to foreign customers, (2) submits the trades of such foreign customers that are entered into on U.S. markets for clearing on an omnibus basis through a registered FCM, and (3) does not solicit or accept orders from U.S. customers for trading on U.S. markets. In contrast, the Commission always has maintained that any commodity interest activities undertaken by a foreign broker on behalf of any U.S. person for trading on or subject to the rules of a U.S. market would have required registration on the part of the foreign broker.

The genesis of the "foreign broker exemption" occurred in 1938 when the Commodity Exchange Authority ("CEA"), the Commission's predecessor, issued an Administrative Determination stating that the segregation requirements in Section 4d of the Act did not apply to foreign, non-clearing member firms because that provision, despite containing no express territorial limitation, was considered to be "confined to the geographical area over which the law-making power has jurisdiction."⁵ The Commission notes that the scope of the CEA's determination was restricted to non-clearing activities.

⁴ 7 U.S.C. 6d(a)(1) (2000).

⁵ Administrative Determination No. 51 (March 17, 1938).

In 1980, the Commission further addressed the participation of foreign persons on U.S. markets in a **Federal Register** release amending Part 15 of the Commission's regulations. The Commission stated that:

[F]oreign entities presently comprise a significant portion of the traders in various commodities on domestic exchanges. Nevertheless by engaging in futures trading in the United States, foreign persons, like domestic market participants, become subject to the regulatory scheme of the Commodity Exchange Act * * *.⁶

As a consequence, the Commission promulgated market surveillance reporting rules that contemplate that a foreign broker submits its trades for clearing on an omnibus basis through an FCM.⁷

In 1983, the Commission unambiguously set forth its policy regarding the registration of foreign brokers in a final rulemaking establishing the registration requirements and procedures for introducing brokers and other futures industry professionals. The Commission stated that

Given this agency's limited resources, it is appropriate at this time to focus [the Commission's] customer protection activities upon domestic firms and upon firms soliciting or accepting orders from domestic users of the futures markets and that the protection of foreign customers of firms confining their activities to areas outside this country, its territories, and possessions may best be for local authorities in such areas.⁸

Accordingly, the Commission concluded that "a foreign broker would generally not need to register as an introducing broker."⁹

⁶ 45 FR 30426 (May 8, 1980). The 1980 **Federal Register** release cited the Commission's decision in *In the Matter of AWiscope*, S.A. CFTC Docket No. 79-114 [1977-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,785 at p. 23192, n. 12 (March 19, 1979), *vacated on other grounds*, 604 F.2d 764 (2d Cir. 1979). In the *Wiscope* division, the Commission stated that:

[A] foreign broker, like any other person or entity, is required to place all orders to buy or sell futures contracts through a registered futures commission merchant. Historically, futures commission merchants have often carried foreign brokers' accounts as 'omnibus accounts' in which transactions for a broker's customers are combined and carried in the name of the broker, rather than being accounted for and separately identified by the customer.

⁷ See, e.g., Regulations 15.05 and 17.04.

⁸ 48 FR 35247, 35261 (August 3, 1983). The Commission cited to prior iterations of this policy concept dating back to 1980, as well as to a staff letter on the topic issued in 1975. 45 FR 18356, 18360 (March 20, 1980); 45 FR 80490 (December 5, 1980); CFTC Staff Letter 75-12 [1975-1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,099 (October 6, 1975).

⁹ *Id.* An introducing broker is defined as a person engaged in soliciting or in accepting orders for futures and options contracts listed on any contract

The Commission's staff has taken action consistent with the Commission's policy regarding the participation of foreign persons on U.S. markets. For example, in CFTC Staff Letter 89-07, Commission staff state that

The Commission has not required a person located outside the United States which engages in the conduct described in section 2(a)(1)(A) of [the Act] for or on behalf of foreign customers through a U.S. FCM to register as an FCM. Specifically, the Commission has not required a foreign broker as that term is defined in rule 15.00(a)(1) to register as an FCM.¹⁰

The Commission notes that, by limiting the exemptive relief to activities conducted "through a U.S. FCM," staff did not extend the exemptive relief available to a foreign broker to include the submission of trades executed for its customer and non-customer accounts directly to a clearing organization for a U.S. market.¹¹

In addition, the Commission's Office of General Counsel ("OGC") issued an interpretative letter in 1976 addressing the participation of foreign-based CPOs and CTAs on U.S. markets. In its letter, OGC stated that a person who operates commodity pools outside of the territorial U.S. is not required to register as a CPO when such a person confines the pool activities to areas outside the territorial U.S., none of the participation in the pool is a resident or citizen of the U.S., and none of the funds or capital contributed to the pools are from U.S. sources.¹² The OGC interpretative letter also stated that a trading advisor located outside the territorial U.S. who provides advice as to the advisability of trading futures contracts on domestic and foreign exchanges is not required to register when such a person confines its advisory services to areas outside of the

market or derivatives transaction execution facility that does not accept any money, securities, or property to margin any trades that result from such orders. See Section 1a(23) of the Act; see also Regulation 1.3(mm).

¹⁰ CFTC Staff Letter 89-07, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,479 at 36,096-97 (June 22, 1989); see also, CFTC Staff Letter 98-80, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,503 (November 25, 1998); CFTC Staff Letter 93-113, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,930 (October 29, 1993); CFTC Staff Letter 92-19, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,516 (October 9, 1992).

¹¹ A non-customer account would include accounts carried for persons closely related to the foreign broker such as a parent or subsidiary company, a director or a major shareholder. See 17 CFR 1.17(b)(4).

¹² CFTC Staff Letter 76-21, [1975-1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,222 (August 15, 1976). OGC further noted that "[t]he pools trade through the London office of your company, which is a futures commission merchant registered with the Commission." *Id.*

territorial U.S., and none of its clients is a citizen or resident of the U.S.¹³

The Commission believes that it is appropriate at this time to codify the "foreign broker exemption" as a means to provide greater legal certainty with respect to the commodity interest activities undertaken by those persons located outside the U.S. on U.S. markets. Accordingly, the Commission is proposing to amend Regulation 3.10(c) to exempt from registration as an FCM any person that (1) limits its customers to customers located outside the U.S.¹⁴ (2) confines its commodity interest activities to areas outside the U.S. and (3) submits its trades for clearing on an omnibus basis through a registered FCM.

II. Proposed Regulations

The Commission proposes to amend Regulation 3.10(c) to provide a limited exemption from registration to certain persons located outside the U.S. that engage in brokerage activities on domestic markets on behalf of customers located outside the U.S. Specifically, the Commission proposes to codify the "foreign broker exemption" previously articulated by the Commission and its staff by amending Regulation 1.3 to include a new definition of "foreign broker." The existing definition of "foreign broker" in Regulation 15.00(g) is limited in context to the market surveillance reporting requirements set forth in Parts 15 to 21 of the Commission's regulations. Proposed Regulation 1.3(xx) would define "foreign broker" as a person located outside the U.S.¹⁵ who acts in the capacity of an FCM, as described in Regulation 1.3(p), and who solicits or accepts orders for execution on or subject to the rules of U.S. markets from persons outside the U.S. Unlike the Regulation 15.00(g) definition, the application of Proposed Regulation 1.3(xx) would not be restricted to a particular part of the Commission's regulations. In conjunction with the provisions to Regulation 3.10(c) described below, the new definition of "foreign broker" would clarify that the commodity interest activities undertaken on U.S. markets by a person located outside the U.S. are subject to general Commission oversight, and not

limited to the market surveillance activities described in Parts 15 to 21 of the Commission's regulations.

The Commission also is proposing to amend Regulation 1.3 to add new paragraph (yy) to provide a definition of the term "commodity interest." Regulation 4.10(a)(1) currently defines "commodity interest" to mean: (1) any contract for the purchase or sale of a commodity for future delivery; and (2) any contract, agreement or transaction subject to Commission regulation under Section 4c or 19 of the Act. This definition of "commodity interest" includes not only futures contracts, but options on futures and cash commodities traded on U.S. markets. Regulation 4.10(a)(1), however, applies only to Part 4 of the Commission's regulations governing CPOs and CTAs. Rather than address the commodity interest activities of foreign brokers and other persons located outside the U.S. by reference to Regulation 4.10(a)(1), the Commission is proposing to promulgate new Regulation 1.3(yy) to clarify that these activities are subject to the Commission's general oversight, including the registration requirements set forth in Part 3 of the Commission's regulations. In order to eliminate any confusion resulting from duplicate regulations, the Commission proposes further to remove the existing definition of "foreign broker" from Regulation 15.00(g), and the existing definitions of "commodity interest" from 1.56(a), 3.1(f), 4.10(a), and 166.1(a), respectively.

In addition to the proposed changes to Part 1 of the Commission's regulations, the Commission proposes to amend Regulation 3.10(c) to exempt from FCM registration any foreign broker, as defined in new Regulation 1.3(xx), that submits customer or proprietary trades executed on or subject to the rules of U.S. markets for clearing on an omnibus basis through a fully registered FCM. Any foreign broker eligible for such relief would be required to continue to comply with all other provisions of the Act and of the rules, regulations and orders thereunder, including the reporting requirements set forth in Parts 15 to 21 of the Commission's regulations.

The Commission has not proposed to extend the exemption from FCM registration to permit a foreign broker to become a remote clearing member of a derivatives clearing organization ("DCO") without having to register as an FCM. A firm routinely submitting customer positions for clearing by a DCO is not confining its activities to

areas located outside this country.¹⁶ As a result, the proposal would require the foreign broker to submit all of its trades, both customer and proprietary, for clearing through a registered FCM. In addition, the Commission notes that it always has been concerned about oversight of clearing member firms because of the potential for systemic risk.

The Commission also believes that remote clearing raises material policy issues with respect to both the financial integrity of the markets and customer protection. For example, FCM registrants are subject to requirements concerning fitness, capital, treatment of funds, recordkeeping, and ongoing reporting, and FCM compliance and these standards are monitored by the Commission, and the relevant self-regulatory organization. Exemption from registration would relinquish those safeguards.¹⁷

Comments regarding the proposed amendment to Regulation 3.10(c) and the corresponding amendments to related regulations should not be limited to the areas cited above, but rather should address all aspects of the Commission's regulatory program, including its goals to protect investors and the public interest; to promote fair competition, market efficiency, innovation and the expansion of investment opportunities; and to maintain fair and orderly markets.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-611, requires that agencies, in proposing regulations, consider the impact of those regulations on small businesses. The Commission has previously established certain definition of "small entities" to be used

¹⁶ See *Quill Corp. v. North Dakota*, 504 U.S. 298, 307-308 (1992) (holding that if a foreign corporation purposefully avails itself of the benefits of an economic market in the forum State, it may subject itself to the *in personam* jurisdiction even if it has no physical presence in the State); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985) ("it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted.").

¹⁷ The Commission is not aware that this type of arrangement has caused hardship for registered FCMs located in the U.S., such as any requirement imposed upon them by foreign regulators because they submit for clearing by a DCO transactions for persons located outside of the U.S. The Commission similarly permits a firm located outside of the U.S. whose only contact with U.S. customers consists of acting as the clearing firm for transactions executed on or subject to the rules of a foreign board of trade on an omnibus basis to do so without being registered as an FCM. 17 CFR 30.4(a).

¹³ *Id.*

¹⁴ The limitation applies to solicitation as well as acceptance of orders. Accordingly, if a person located outside of the U.S. were to solicit prospective customers located in the U.S. as well as outside the U.S., this exemption would not be available, even if the only customers resulting from the efforts were located outside of the U.S.

¹⁵ Consistent with existing Commission regulations, the proposed regulations refer to the United States, its territories and possessions.

by the Commission in evaluating the impact of its regulations on such entities in accordance with the RFA.¹⁸ The Commission previously has determined that registered FCMs are not small entities for the purpose of the RFA because each FCM has an underlying fiduciary relationship with its customers, regardless of the size of the FCM.¹⁹ The Commission notes that the foreign persons affected by the proposed changes to the Commission's regulations would be registered as FCMs if not for the exemption provided therein and, as such, would maintain a fiduciary relationship with customers similar to the relationship maintained by each registered FCM. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact these proposed rules may have on small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.* (Supp. I 1995)) 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.

While the proposed rule discussed herein has no burden, the group of rules (3038-0023, Rules, Regulations and Forms for Domestic and Foreign Futures and Options Related to Registration with the Commission) of which it is a part has the following burden:

Average Burden Hours Per Response: 18.11
Number of Respondents: 76,750.

Frequency of Response: Annually and On Occasion.

The Office of Management and Budget ("OMB") approved the collection of information associated with the group of rules on August 17, 2004. Copies of the OMB-approved information collection submission are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC, 20581 (202) 418-5160.

C. Costs and Benefits of the Proposed Rules

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before issuing new regulations under the Act. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of new regulations or to

determine whether the benefits of the proposed regulations outweigh their costs. Rather, Section 15(a) requires the Commission to "consider the cost and benefits" of the subject regulations.

Section 15(a) further specifies that the costs and benefits of the proposed regulations 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. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular regulation is 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 proposed regulations should foster the protection of market participants and the public by providing greater legal certainty to the commodity interest activities of persons located outside the U.S. As the activity set forth in the proposed regulations presently is permitted under staff interpretation and no-action, the proposed regulations should have no material impact from the standpoint of imposing costs or creating benefits, on efficiency, competitiveness and financial integrity of financial markets, price discovery, sound risk management practices, or any other public interest considerations.

List of Subjects

17 CFR Part 1

Definitions, Registration, Minimum financial and reported requirements, Prohibited transactions in commodity options, Customers' money, securities and property, Miscellaneous.

17 CFR Part 3

Definitions, Foreign futures, Consumer protection, Foreign options, Registration requirements.

17 CFR Part 4

Advertising, Commodity futures, Consumer Protection, Recordkeeping and reporting requirements.

17 CFR Part 5

Brokers, Reporting and recordkeeping requirements.

17 CFR Part 166

Authorization to trade, Customer protection.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 2(a)(1), 4(b), 4c and 8a thereof, 7 U.S.C. 2, 6(b), 6c and 12a (1982), and pursuant to the authority contained in 5 U.S.C. 552 and 552b (1982), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—DEFINITIONS

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

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24, unless otherwise noted.

2. Section 1.3 is amended by adding paragraphs (xx) and (yy) to read as follows:

§ 1.3 Definitions.

* * * * *

(xx) *Foreign Broker.* This term means any person located outside the United States, its territories or possessions who is engaged in soliciting or in accepting orders only from persons located outside the United States, its territories or possessions for the purchase or sale of any commodity interest transaction on or subject to the rules of any designated contract market or derivatives transaction execution facility and that, in or in connection with such solicitation or acceptance of orders, accepts any money, securities or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

(yy) *Commodity Interest.* This term means: (1) Any contract for the purchase or sale of a commodity for future delivery; and (2) any contract, agreement or transaction subject to Commission regulation under section 4c or 19 of the Act.

§ 1.56 [Amended]

Section 1.56 is amended by removing and reserving paragraph (a).

PART 3—REGISTRATION

4. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 522, 522b; 7 U.S.C. 1a, 2, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23, unless otherwise noted.

§ 3.1 [Amended]

5. Section 3.1 is amended by removing and reserving paragraph (f).

6. Section 3.10 is amended by revising paragraph (c) to read as follows:

¹⁸ 47 FR 18618-18621 (April 30, 1982).

¹⁹ 47 FR 18619-18620.

§ 3.10 Registration of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

* * * * *

(c) *Exemption from registration for certain persons.* (1) A person trading solely for proprietary accounts, as defined in § 1.3(y) of this chapter, is not required to register as a futures commission merchant: *Provided*, that such a person remains subject to all other provisions of the Act and of the rules, regulations and orders thereunder.

(2)(i) A foreign broker, as defined in § 1.3(xx) of this chapter, is not required to register as a futures commission merchant if it submits any commodity interest transactions executed on or subject to the rules of designated contract market or derivatives transaction execution facility for clearing on an omnibus basis through a futures commission merchant registered in accordance with section 4d of the Act.

(ii) A foreign broker acting in accordance with paragraph (c)(2)(i) of this section remains subject to all other provisions of the Act and of the rules, regulations and orders thereunder.

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

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

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

§ 4.10 [Amended]

8. Section 4.10 is amended by removing and reserving paragraph (a).

PART 15—REPORTS—GENERAL PROVISIONS

9. The authority citation for part 15 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6(c), 6a, 6c(a)–(d), 6f, 6g, 6i, 6k, 6m, 6n, 7, 9, 12a, 19 and 21, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

§ 15.00 [Amended]

10. Section 15.00 is amended by removing and reserving paragraph (g).

PART 166—CUSTOMER PROTECTION RULES

11. The authority citation for part 166 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6b, 6c, 6d, 6g, 6h, 6k, 6l, 6o, 7, 12a, 21, and 23, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

§ 166.1 [Amended]

12. Section 166.1 is amended by removing and reserving paragraph (b).

Dated: March 23, 2007.

By the Commission.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 07–1522 Filed 3–30–07; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 261

RIN 0596–AC30

Clarifying Prohibitions for Failure To Maintain Control of Fires That Damage National Forest System Lands

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; request for comment.

SUMMARY: The Forest Service is proposing to revise 36 CFR part 261, Prohibitions, to establish a new prohibition for starting and negligently failing to maintain control of a prescribed fire. Proof of criminal negligence is required of this offense. The Forest Service also is proposing to clarify that the prohibition for causing and failing to maintain control of all other fires is a strict liability offense, not requiring proof of criminal intent. In implementing the National Fire Plan, the Forest Service has encouraged adjacent landowners to develop integrated fire management plans for the use of prescribed fire for the restoration and protection of private lands adjacent to National Forest System lands. Without the proposed changes, adjacent landowners might be discouraged from using prescribed fire.

DATES: Comments must be received in writing by June 1, 2007.

ADDRESSES: Written comments concerning this notice should be addressed to USDA Forest Service, State and Private Forestry, Stop 1109, 1400 Independence Avenue, SW., Washington, DC 20250–1109. Comments may also be sent via e-mail to spf@fs.fed.us or via facsimile to 202–205–1174. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at USDA Forest Service, State and Private Forestry, 1400 Independence Avenue, SW., Washington, DC 20250–1109. Visitors are encouraged to call ahead to 202–

205–1331 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Denny Truesdale, State and Private Forestry, 202–205–1588. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following outline contains the contents of the **SUPPLEMENTARY INFORMATION** section of this proposed rule:

Background
Regulatory Certifications
Regulatory Impact
Environmental Impact
Federalism
Consultation With Tribal governments
No takings Implications
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List of Subjects in Part 261

Background

A new paragraph (c) would be added to section 261.1, Scope, to clarify that unless criminal intent (“*mens rea*”) is expressly required in the provision setting forth the offense, strict liability would apply. Whether criminal intent is a required element of an offense is a question of statutory construction. Where a statute or regulation does not expressly require criminal intent, “silence on this point by itself does not necessarily suggest that Congress intended to dispense with the conventional *mens rea* element * * *” *Staples v. United States*, 511 U.S. 600, 605 (1994). As a general rule, absent a clear indication of legislative intent, courts require proof of intent for criminal offenses. See *Id.* at 605, for a discussion of cases that support this well-established principle.

However, the general presumption that some guilty intent or purpose is required does not apply to “public welfare offenses.” These are offenses that typically impose penalties to serve as an effective means of regulation. *Id.* At 606 (“[i]n construing such statutes, we have inferred from silence that Congress did not intend to require proof of *mens rea* to establish an offense”). Public welfare offenses are those that “are not of the nature of positive aggressions or invasions, with which the common law so often dealt, but are in the nature of neglect where the law requires care, or inaction where it imposes duty.” *Morrisette v. United States*, 342 U.S. 246, 255 (1952). Public