

Replacement

(g) Within 60 months after the effective date of this AD: Replace the power control relays for the main tank fuel boost pumps and jettison pumps, and the center tank scavenge pump, as applicable, with new relays having a ground fault interrupt feature, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747-28A2261, dated February 19, 2009.

Maintenance Program Revision

(h) Concurrently with the actions required by paragraph (g) of this AD: Revise the maintenance program by incorporating the applicable information in paragraphs (h)(1) and (h)(2) of this AD. The inspection interval for AWLs 28-AWL-23, 28-AWL-28, and 28-AWL-29 starts on the date the replacement required by paragraph (g) of this AD is done.

(1) For Model 747-400, 747-400D, and 747-400F series airplanes: Incorporate new airworthiness limitations 28-AWL-28 and 28-AWL-29 of Subsection D, "AIRWORTHINESS LIMITATIONS—FUEL SYSTEMS," of Boeing 747-400 Maintenance Planning Data (MPD) Document, Document D621U400-9, Section 9, Revision April 2008. (These AWLs were first introduced in Revision October 2007 of the MPD document.)

(2) For Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747SP, and 747SR series airplanes: Incorporate new airworthiness limitation 28-AWL-23 of Subsection D, "AIRWORTHINESS LIMITATIONS—SYSTEMS," of Boeing 747-100/200/300/SP Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), Document D6-13747-CMR, Revision March 2008. (This AWL was first introduced in Revision September 2007 of the AWLs/CMRs document.)

No Alternative Inspection or Inspection Intervals

(i) After accomplishing the action required by paragraph (h) of this AD, no alternative inspections or inspection intervals may be used, unless the inspections or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone (425) 917-6482; fax (425) 917-6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector

(PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on September 25, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

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COMMODITY FUTURES TRADING COMMISSION**17 CFR Part 1**

RIN 3038-AB87

Electronic Filing of Financial Reports and Notices

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to amend certain of its regulations in connection with electronic filing of financial reports and other notices ("Proposal"). The Proposal would broaden the language in the Commission's regulations applicable to electronic filings of financial reports to clarify that, to the extent a futures commission merchant ("FCM") submits a Form 1-FR to the Commission electronically, it may do so using any user authentication procedures established or approved by the Commission. The Proposal also would permit registrants to electronically submit filings in addition to financial reports, including an election to use a non-calendar fiscal year, requests for extensions of time to file uncertified financial reports and "early warning" notices required under Commission regulations. In connection with the filing of financial reports, the Commission also is proposing to specify, consistent with other requirements and existing practice, that a statement of income and loss is included as a required part of the non-certified 1-FR filings for FCMs and introducing brokers ("IBs"). The Commission also is proposing to require more immediate, but less prescriptive, documentation regarding a firm's capital condition when a firm falls below its required minimum adjusted net capital. Finally, the Commission is proposing several other minor amendments to correct certain outdated references and to make other clarifications to existing regulations.

DATES: Comments must be received on or before November 12, 2009.

ADDRESSES: You may submit comments, identified by RIN 3038-AB87, by any of the following methods:

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

- *E-mail:* secretary@cftc.gov. Include "Electronic Filing Amendments" in the subject line of the message.

- *Fax:* (202) 418-5521.

- *Mail:* Send to David Stawick, Secretary, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

- *Courier:* Same as Mail above.

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

FOR FURTHER INFORMATION CONTACT:

Thelma Diaz, Associate Director, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW., Washington, DC 20581. Telephone number: 202-418-5137; facsimile number: 202-418-5547; and electronic mail: tdiaz@cftc.gov, or Lawrence T. Eckert, Special Counsel, Division of Clearing and Intermediary Oversight, 140 Broadway, New York, New York 10005. Telephone number (646) 746-9704; and electronic mail: leckert@cftc.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

Section 4f(b) of the Commodity Exchange Act, as amended (the "Act") authorizes the Commission to impose by regulation minimum financial and related reporting requirements on futures commission merchants ("FCMs") and introducing brokers ("IBs").¹ Commission Regulation 1.10 sets forth the financial reporting requirements for FCMs and IBs.² This regulation includes a requirement for FCMs and IBs to file annual financial statements that have been certified by an independent public accountant in accordance with Regulation 1.16. Regulation 1.10 also requires generally that FCMs file with the Commission non-certified Form 1-FR-FCM financial reports each month and that IBs file non-certified Form 1-FR-IB financial

¹ The Act is codified at 7 U.S.C. 1 *et seq.* (2009), and section 4f(b) of the Act is codified at 7 U.S.C. 6f(b). The Commission's regulations cited in this proposed rulemaking may be found at 17 CFR Ch. 1 (2009).

² For simplicity, references in this **Federal Register** release to IBs in connection with financial reporting and notice requirements are intended to refer to IBs that are not operating pursuant to a guarantee agreement.

reports semiannually.³ Commission Regulation 1.12 requires FCMs, IBs and applicants for registration thereof to provide notice of a variety of predefined events as or before they occur.⁴

The Commission amended Regulation 1.10 in 1997 to provide for the first time the regulatory means for FCMs and IBs to file financial reports electronically with the Commission.⁵ Regulation 1.10(c)(2) permits FCMs to file non-certified financial reports with the Commission via electronic transmission using a Commission-assigned personal identification number (“PIN”). Regulation 1.10(b)(2)(iii) requires FCMs to continue to file certified financial reports in paper form, but requires IBs to file such certified reports electronically in accordance with procedures adopted by the National Futures Association (“NFA”).⁶

FCMs that file their non-certified financial reports electronically with the Commission currently do so through WinJammer,TM a software application initially developed jointly by the Chicago Mercantile Exchange (“CME”) and the Chicago Board of Trade (“CBT”). The WinJammerTM Group⁷ has licensed or otherwise provided

³ Commission Regulation 1.10(h) permits a registrant that also is registered as a securities broker-dealer with the Securities and Exchange Commission (“SEC”) to file a copy of its Financial and Operational Combined Uniform Single Report (“FOCUS”) with the Commission in lieu of Form 1-FR.

⁴ For example, Regulation 1.12(a) requires immediate telephonic notice, to be confirmed in writing by facsimile, when a registrant’s (or applicant’s) adjusted net capital falls below that required by Regulation 1.17. Other provisions of Regulation 1.12 require notification to the Commission for certain “early warning” events. Regulation 1.12(b), for example, requires notification by a registrant or applicant if such entity’s adjusted net capital drops below a specified threshold.

⁵ See 62 FR 10441 (March 7, 1997) (a technical amendment to the final rules is found at 62 FR 33007 (June 18, 1997)). Many firms were already filing financial reports electronically with their self regulatory organizations (“SROs”) at this time pursuant to SRO rules approved by the Commission.

⁶ The Commission approved on an expedited basis, effective June 30, 2004, NFA rule amendments which require that IBs submit non-certified Forms 1-FR-IB or FOCUS reports electronically using NFA’s EasyFile electronic filing system. On November 22, 2006, in response to a petition by NFA, the Commission adopted amendments to its regulations that effectively provided NFA with the ability to further expand its electronic financial report filing requirements applicable to IBs to include mandatory electronic filing of certified financial reports. 71 FR 54789 (Sep. 19, 2006). Although submissions by IBs of certified Form 1-FR-IB must be made electronically, NFA has not yet mandated electronic filing of certified FOCUS reports by IBs registered as securities brokers or dealers.

⁷ The “WinJammerTM Group” consists of the CME, CBT, and NFA, which joined the group in 2000.

application access to a number of SROs and regulatory agencies, including the Commission. IBs file financial reports with NFA through NFA’s “EasyFile” system, which was developed by NFA as an internet-based alternative to WinJammer.TM

The WinJammerTM Group currently is working on a new release of its application that would, among other things, move toward an internet-based approach to electronic filing of documents. It is envisioned that security access to the updated WinJammerTM application will no longer require a PIN, but rather will use a username/password combination for authentication. The new application is expected to provide a number of advancements over the current software, including the ability for FCMs to file notices on a central server to be maintained by the WinJammerTM Group. The use of a central server-approach will facilitate greater filing efficiency by enabling an FCM to make a single electronic filing to the server. The filing would be available to and would be downloaded by the software of the Commission, NFA and/or the relevant SRO, as applicable. The registrant would be responsible to check its WinJammerTM account for confirmation that the filing had in fact been received by the intended recipients. Currently, FCMs must make separate electronic filings with each relevant party.

II. Proposed Rule Amendments

A. Electronic Filing Issues

Commission Regulation 1.10(c) generally sets forth the provisions governing where and how the financial reports required to be filed by FCMs and IBs under Regulation 1.10 must be filed. Regulation 1.10(c)(1) indicates with whom reports should be filed. Regulation 1.10(c)(2) addresses the method, rather than the location of filing and provides that certain non-certified financial reports may be submitted to the Commission via electronic transmission using a Commission-assigned personal identification number. Electronic submission of certified financial reports is addressed in Regulation 1.10(b)(2)(iii). This section provides that FCMs must file certified financial reports in paper form and IBs must file such reports electronically in accordance with electronic filing procedures established by NFA.

For clarification and ease of reading, the Proposal would move Regulation 1.10(b)(2)(iii) into a new subparagraph of Regulation 1.10(c)(2). Regulation

1.10(c)(2) would be amended as discussed below and divided into 2 new subparagraphs: Subparagraph (c)(2)(i) would address electronic filing by FCMs with the Commission and subparagraph (c)(2)(ii) would address electronic filings with NFA by IBs and by applicants for registration as IBs and FCMs.

Regulation 1.10(c)(2) currently provides that non-certified financial reports may be submitted to the Commission “in electronic form using a Commission assigned Personal Identification Number, and otherwise in accordance with instructions issued by the Commission * * *.” As discussed above, the anticipated changes to the user authentication process for WinJammerTM users would no longer utilize a PIN. Accordingly, the Commission is proposing to broaden the language in the regulation relating to user authentication. In addition, the Commission is proposing to permit any filing or other notice submitted under the regulation to be transmitted electronically, rather than limiting such submission to financial reports as under the current regulation. This would enable FCMs to electronically file, for example, an election to use a fiscal year other than a calendar year under Regulation 1.10(e) or a request for an extension of time to file uncertified financial reports under Regulation 1.10(f). As amended, Regulation 1.10(c)(2)(i) would provide that “[except with respect to the filing of certified financial reports which must be filed in paper form], all filings or other notices or applications prepared by a futures commission merchant pursuant to [Regulation 1.10] may be submitted to the Commission in electronic form using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instruction issued by or approved by the Commission, if the futures commission merchant or a designated self-regulatory organization has provided the Commission with the means necessary to read and to process the information contained in such report.” The Commission also would revise the instructions to Form 1-FR-FCM to reflect this change. Regulation 1.10(c)(2)(ii) would provide that “[except with respect to the filing of certified FOCUS reports by a registered broker or dealer with the SEC], all filings or other notices or applications prepared by an introducing broker or applicant for registration as an introducing broker or futures commission merchant * * * must be

filed electronically in accordance with electronic filing procedures established by the National Futures Association
* * *

Regulation 1.10(d)(4)(iii) provides that with respect to the electronic submission of a Form 1-FR, the transmission must be accompanied by the PIN or other user authentication assigned to the authorized signer under procedures established or approved by the Commission, and the use of such PIN or other user authentication will substitute for the manual signature of the authorized signer for the purposes of making the oath or affirmation required to accompany the filing of Form 1-FR. In light of the amendments to Regulation 1.10 discussed above related to user authentication procedures, the Proposal would delete from Regulation 1.10(d)(4)(iii) references to the use of a PIN.

Commission Regulation 1.12 requires FCMs, IBs and applicants for registration thereof to provide notice of a variety of predefined events as or before they occur.⁸ The regulation generally requires such notices to be provided in writing by facsimile and, in certain cases, written notice must be preceded by immediate telephonic notice. Regulation 1.12(i) provides the procedures for filing notices under Regulation 1.12. In light of the anticipated changes to the WinJammer™ application, the successful implementation in the past of the electronic filing of Form 1-FR with the Commission and the potential benefits in terms of efficiency and paper reduction, the Commission is proposing to amend Regulation 1.12(i) to allow FCMs and IBs to submit electronically filings otherwise required to be submitted in writing via facsimile under Regulation 1.12.⁹ The Proposal would add new subparagraph 1.12(i)(3) which would provide that “[e]very notice or report required to be provided in writing under [Regulation 1.12] may, in lieu of facsimile, be filed via electronic transmission using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission.” An electronic submission would be required to clearly

indicate the registrant or applicant on whose behalf such filing is made and the use of such user authentication in submitting such filing would constitute and become a substitute for the manual signature of the authorized signer.

B. Income Statement Filing Requirement

Commission Regulation 1.10(d) sets forth the content requirements for financial reports filed with the Commission: Regulation 1.10(d)(2) applies to certified financial reports and Regulation 1.10(d)(1) applies to non-certified financial reports.

Certified financial reports are required to include, among other things, “statements of income (loss)” pursuant to Regulation 1.10(d)(2)(i). This requirement is not currently included as part of Regulation 1.10(d)(1) in connection with the filing of non-certified financial reports. In practice, however, FCMs and IBs typically include such statements with all financial report filings made with the Commission, whether or not such reports are required to be certified. FCMs that are also registered with the SEC as broker-dealers and that carry or clear customer accounts already are required to file with their designated examining authority an income statement as part of their monthly FOCUS filing.¹⁰ Other FCMs and IBs, while not necessarily required to file these statements, must nonetheless compute the firm’s income and loss on a monthly basis (or semiannual basis in the case of IBs) in order to appropriately complete other relevant portions of Form 1-FR or FOCUS. Both Form 1-FR and FOCUS already are formatted to accept the reporting of income and loss data electronically.

The income statement is an integral part of the financial report that the Commission believes should be available for review along with other relevant financial data filed on an interim basis. Additionally, requiring the filing of such statements should not add any additional burden to registrants. In fact, as mentioned, substantially all FCMs and IBs already include such statements as part of their non-certified financial reports filed with the Commission. Accordingly, the Commission is proposing to amend Regulation 1.10(d)(1)(ii) to require “statements of income (loss)” to be included as part of FCM and IB non-certified financial report filings. By requiring that firms file an income statement with their non-certified

financial reports as well as with their annual certified report, the amended rule would ensure that Commission staff receive more current information and have the ability to review this information relating to a firm’s financial health more than once a year. This amendment would not affect the ability of a broker-dealer to file with the Commission in accordance with Regulation 1.10(h) the FOCUS report under the Securities and Exchange Act of 1934, including the income statement currently provided in that report.¹¹ Further, as is true of such statements filed as part of a certified financial report, income statements included as part of a non-certified 1-FR or FOCUS filing would be afforded nonpublic treatment pursuant to Commission Regulation 1.10(g).

C. Net Capital Undercapitalization Documentation

The Commission is proposing to amend Regulations 1.12(a)(2) and (a)(3) to require more immediate, but less prescriptive, reporting to the Commission when a registrant or applicant falls below its minimum net capital requirement. Regulation 1.12(a) requires a registrant or applicant for registration as an FCM or IB that knows or should have known that its adjusted net capital is less than the minimum required by the Commission or by its designated self-regulatory organization (“DSRO”) to provide notice of such event immediately by telephone and confirm such telephonic notice in writing by facsimile. Regulation 1.12(a)(2) further requires that, within 24 hours thereafter, the registrant (or applicant) must file certain financial records with the Commission. Specifically, an FCM (or applicant) is required to file: (1) A statement of financial condition; (2) a statement of the computation of its minimum capital requirements; (3) the statements of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers’ dealer options accounts; and (4) the statement of secured amounts

¹¹ Under SEC Regulation 17a-5 and rules of applicable self-regulatory organizations, certain securities brokers or dealers may include as part of their quarterly FOCUS report filings a consolidated Statement of Income (Loss) for the relevant quarter rather than a Statement of Income (Loss) for the month for which the report is being filed (i.e., March, June, September or December). Such broker-dealers that also are registered as FCMs would file these same reports with the Commission. The Commission wishes to make clear that an otherwise complete FOCUS report filing made with the Commission that includes such a consolidated Statement of Income (Loss) would be deemed an acceptable filing in accordance with Commission Regulation 1.10(h).

⁸ See footnote 4, above.

⁹ IBs file notices under Regulation 1.12 with NFA pursuant to NFA rules. NFA has indicated that it intends to make changes to the EasyFile system and/or NFA rules, as may be necessary to facilitate the electronic filing by IBs of notices or other information permitted to be submitted electronically by the Proposal but currently filed with NFA in paper form.

¹⁰ Non-clearing broker-dealers file FOCUS, including the statement of income (loss), on a quarterly basis.

and funds held in separate accounts for foreign futures and foreign options customers. Regulation 1.12(a)(3) requires an IB (or applicant) to file a statement of financial condition and a statement of the computation of its minimum capital requirements. All statements under Regulations 1.12(a)(2) and (a)(3) must be prepared as of the date the registrant's or applicant's adjusted net capital was below its minimum requirement.

When a firm falls below its minimum adjusted net capital requirement, the Commission's interest is to understand fully the circumstances that gave rise to the reduction in capital and to ensure that there are no imminent concerns regarding the firm's ability to meet its obligations to the market or customers, or to otherwise continue normal business operations. The statements required by the current regulation help provide a picture of a firm's financial position as of the time such statements are prepared. The regulations, however, currently allow up to 24 hours from the receipt of original notice of a net capital deficiency for such documentation to be provided. In practice, firms that notify the Commission of a fall below minimum net capital under Regulation 1.12(a) often simultaneously provide written information to the Commission sufficient to evidence the firm's then-current capital condition. Such information has not always taken the specific form prescribed in the regulation, however. Upon receipt of information from a registrant, Commission staff members have requested further information as determined appropriate and necessary in the circumstances. Firms generally have been prompt in providing such data.

The Commission has found that receiving more immediate information regarding a firm's capital condition better satisfies the Commission's interests and typically is of greater benefit than obtaining documentation in the specific form currently prescribed at the expense of a time delay. Accordingly, the Commission is proposing to amend Regulation 1.12(a) consistent with this practice. Under the Proposal, a firm must continue to provide immediate telephonic notice, confirmed in writing, in the event that its adjusted net capital falls below its required minimum. Paragraph 1.12(a)(2) would be amended to require that together with such initial telephonic notice and written confirmation, a firm must provide "documentation in such form as necessary to adequately reflect the firm's capital condition as of any date such person's adjusted net capital

is less than the minimum required."¹² Thus, a firm would be required to provide documentation regarding its capital condition at the same time as it provides its notice and confirmation of a capital deficiency to the Commission. The amended regulation would, however, provide greater flexibility with respect to the form such documentation must take, allowing any documentation that adequately reflects the firm's capital condition. The Commission envisions that such adequate documentation would at a minimum specify the firm's adjusted net capital requirement and actual adjusted net capital for any date during which the firm fell below its regulatory requirement. By requiring documentation as of "any" date that adjusted net capital is less than the required minimum, the amended regulation makes clear that where a firm is undercapitalized on more than one day, documentation related to all such time must be provided. The amended regulation also would require a firm to provide similar documentation to that initially provided for any other days the Commission may request.¹³ Regulation 1.12(a)(3), which provides supplementary documentation requirements for IBs, would be deleted because amended Regulation 1.12(a)(2) would subsume this section.

As a corollary to the amendment to Regulation 1.12(a)(2), the Commission is proposing to amend Regulation 1.12(i)(1). This section addresses the process for filing notices under Regulation 1.12 and currently requires, among other things, that the documentation required under Regulations 1.12(a)(2) and (a)(3) be filed in accordance with the provisions of section 1.10(d), which specifies the required content of financial reports. This requirement is no longer necessary as the specific financial statements currently referenced in Regulation 1.12(i)(1) would no longer be required under the Proposal. Accordingly, the Proposal would delete this requirement. Documentation required to be provided under amended Regulation 1.12(a)(2) would be submitted either by facsimile or electronically pursuant to amended Regulation 1.12(i)(3).

¹² This amendment is consistent with SEC Regulation 17a-11 which requires a broker or dealer whose net capital falls below its required minimum to give notice of the deficiency that same day, specifying the broker or dealer's net capital requirement and its current amount of net capital.

¹³ Regulation 1.10(b)(4) already provides that representatives of the Commission may upon written notice require Form 1-FR or other financial information at such times as specified by the representative.

D. Miscellaneous Amendments to Regulations

The Commission is proposing several minor amendments to Regulations 1.10 and 1.12 to correct certain outdated references and to otherwise clarify existing regulations. Regulation 1.10(c)(1) states generally that reports filed by IBs pursuant to paragraph (b)(2)(i) or (b)(2)(ii) (*i.e.*, the filing provisions for non-certified and certified reports by registered IBs) are filed only with NFA. Other reports are generally required to be filed with the relevant regional office of the Commission and the registrant's SRO, except that an applicant for registration is required to file reports with the relevant regional office of the Commission and NFA. The Commission has issued orders delegating to NFA the processing of application requests by FCMs and IBs, and in practice almost all financial reports from applicants for registration as FCMs or IBs are filed with the NFA only.¹⁴ Accordingly, the Commission is proposing to amend the language of Regulation 1.10(c)(1) to delete reference to an applicant's need to file financial reports with a regional office of the Commission.

Similarly, Regulation 1.12(i)(1) currently indicates that an applicant for registration as an FCM must file any notices required under Regulation 1.12 with, among others, the regional office of the Commission that has jurisdiction over the state in which the applicant's principal place of business is located and with the Commission's principal office in Washington, DC. The proposed, amended language in Regulation 1.12(i)(1) would make clear that an applicant for registration as an FCM would file such notices only with NFA and that such notices need not be filed with the Commission. The amended regulation would also make clear that any notice or report filed with the National Futures Association will be deemed to be filed with, and to be the official record of, the Commission.

The Commission also is proposing the following minor wording changes to Regulation 1.10(c)(1) for the purposes of consistency with other provisions of the regulations and/or general clarification as follows: (1) The reference to "[a] report filed by an [IB] pursuant to paragraph (b)(2)(i) or (b)(2)(ii)" would be amended to clarify that "a report" in this context is meant to refer to Form 1-

¹⁴ The Commission order delegating to NFA the registration function for IB applicants is published at 48 FR 35158 (August 3, 1983), and the order delegating the registration function for FCM applicants is published at 49 FR 39593 (October 9, 1984).

FR; (2) the reference to subparagraphs (b)(2)(i) and (b)(2)(ii) would be amended for simplicity to refer only to paragraph (b)(2) in general; and (3) the language of paragraph 1.10(c)(1) would be amended to make clear that it is intended to cover not only "reports" but all reports and other "information." The Commission, NFA and SROs are permitted under Regulation 1.10(b)(4) to make a written request of an FCM or IB for information as they may determine is necessary. The proposed amendment would clarify that the guidance provided in Regulation 1.10(c)(1) regarding with whom filings should be made would govern the filing of such requested information.

Regulation 1.10(b)(2)(i) provides generally that an IB must file a Form 1-FR-IB semiannually as of the middle and close of each fiscal year "unless the [IB] elects * * * to file a Form 1-FR-IB semiannually as of the middle and close of each calendar year." Regulation 1.10(b)(2)(ii) generally states further that an IB must file a certified 1-FR-IB as of the close of its fiscal year "(even if it files semiannual reports on a calendar year basis)." Prior to 1993, Commission regulations required IBs to file Form 1-FR on a quarterly rather than a semiannual basis, unless the IB's SRO permitted semiannual filing. The regulations also allowed IBs to elect to file reports on a calendar year basis rather than on a fiscal year basis.¹⁵ This election was separate from the election to use a fiscal year other than a calendar year, which is still permitted to be made under Regulation 1.10(e)(1). The Commission's regulations no longer provide a separate option to elect to file on a calendar year rather than a fiscal year basis and, accordingly, the Commission is proposing to delete the language quoted above referencing such an election.

Regulation 1.10(b)(3) provides generally that an FCM or IB can satisfy the 1-FR filing requirements applicable to them set forth in Regulations 1.10(b)(1) and (2), respectively, if the FCM or IB is a member of a DSRO and satisfies the minimum financial standards and reporting requirements established by rules of the DSRO which have been approved "after the effective date of these regulations by the Commission * * *." The language "after the effective date of these regulations" is no longer relevant and, accordingly, the Commission is proposing to delete the language.

Finally, for purposes of clarification and consistency with the Commission's

regulations the Commission is proposing to amend language within regulation 1.10(h) that references "NFA" by spelling out "National Futures Association."

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing regulations, consider the impact of those regulations on small businesses. The amendments proposed herein would affect FCMs and IBs. The Commission has previously determined that, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entity.

With respect to IBs, the Commission stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all IBs should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time.¹⁶ The Proposal will not place any additional burdens on IBs that are small businesses because all such parties, if any, already are subject to the financial reporting and notice requirements under Regulations 1.10 and 1.12 and already file financial reports through NFA's electronic filing system. Additionally, although the Commission is proposing to add a requirement to include statements of income and loss as part of non-certified financial report filings, substantially all IBs already are filing this data in practice and, in any event, must compute the relevant income and loss data (although not currently required to be provided in a separate income statement) in order to complete Commission Form 1-FR or the SEC FOCUS report, as applicable, under the Commission's regulations.¹⁷ Accordingly, pursuant to Section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that these proposed rule amendments will not have a significant economic impact on a substantial number of small entities. However, the Commission invites the public to comment on this finding.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")¹⁸ 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. The Proposal does not require a new collection of information on the part of any entities subject to the proposed amendments. The amendments would, if adopted in final form, provide FCMs and IBs with an alternative method for submitting certain data. The amendments proposed under Regulation 1.12(a)(2) would provide FCMs and IBs with a more flexible approach to providing documentation if a registrant's adjusted net capital fell below its minimum requirement, but would not require a new collection or affect the collection burden, as discussed below. Additionally, although the Commission is proposing to add a requirement to include statements of income and loss as part of non-certified financial report filings, substantially all registrants that file financial reports with the Commission already are filing this data.

Collection of Information

(Regulations and Forms Pertaining to the Financial Integrity of the Marketplace, OMB Control Number 3038-0024). Although the amendments if promulgated in final form would alter the method of collection of some of the information required in the above referenced collection, would provide a simpler approach of documenting compliance with certain regulatory obligations, and would add a requirement to include an additional statement as part of non-certified financial report filings, the estimated burden associated with this collection is not expected to increase or decrease as a result. The Commission is proposing to add a requirement for certain registrants to include statements of income and loss as part of their monthly non-certified financial report filings with the Commission. Substantially all registrants that file financial reports with the Commission already are filing this data in practice, however. Additionally, to the extent a firm did not already file this report with the Commission monthly, it would, nonetheless, need to have this information computed and available in order to file other currently required reports. Filing the information with the Commission would require nothing more than inputting a few extra data items into a form already required to be filed. Accordingly, the burden associated with such a filing already is included in the estimated burden for this collection. With respect to proposed

¹⁵ See 48 FR 35248 (Aug. 3, 1983) (adopting registration requirements and procedures for IBs, among others).

¹⁶ See 48 FR 35248, 35275-78 (Aug. 3, 1983).

¹⁷ See Commission Regulations 1.10(b)(2) and 1.10(h) (requiring IBs to file with the Commission Form 1-FR-FCM or, as an alternative in the case of a registered broker or dealer with the SEC, the FOCUS report).

¹⁸ 44 U.S.C. 3507(d).

rule amendments that would permit certain entities to file electronically reports and notices that currently are filed in paper form, all such affected entities currently must complete these same reports and notices. The amendments would simply substitute electronic submission for the mailing of a paper filing. With respect to rule amendments concerning the documentation required of FCMs and IBs that fall below their required net capital requirements, these amendments would provide registrants with more flexibility in choosing the form documentation will take when providing the Commission with required information. The Commission believes, however, that the burden associated with preparing such documentation would be equivalent to that required under current regulations. Additionally, although the amendments allow the Commission to request registrants to provide additional documentation on request, this is simply a clarification of, rather than a change to, current regulations and practice and would not affect the collection burden. Accordingly, for purposes of the PRA, the Commission certifies that the proposed rule amendments, if promulgated in final form, would not impact the total annual reporting or recordkeeping burden associated with the above-referenced collection of information, which has been approved previously by the Office of Management and Budget ("OMB"). Pursuant to the PRA, the Commission has submitted a copy of this section to OMB for its review.

The Commission considers comments by the public on this proposed collection of information in—

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, utility, and clarity of the information to be collected; and

Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Organizations and individuals desiring to submit comments on the information collection should contact the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Commission. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 90 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581 or (202) 418-5160.

C. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by Section 119 of the Commodity Futures Modernization 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) as amended 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. The Commission, in its discretion, can choose to give greater weight to any one of the five enumerated areas and 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 Commission has considered the costs and benefits of this proposed regulation in light of the specific provisions of Section 15(a) of the Act, as follows:

1. *Protection of market participants and the public.* The proposed amendments should not affect the

protection of market participants and the public as they generally provide an alternate method of delivery of information contained in certain reports and notice filings currently required or permitted by Commission regulations but do not substantively alter the character of such information.

2. *Efficiency and competition.* The Commission anticipates that the proposed amendments will benefit efficiency by permitting the Commission and NFA to streamline their processes for receiving financial reports and various notice filings from FCMs and IBs and providing greater flexibility to registrants in providing certain required documentation to the Commission. The proposed amendments are considered by the Commission as benefiting efficiency and not impacting competition.

3. *Financial integrity of futures markets and price discovery.* The proposed amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity of futures markets or the price discovery function of such markets.

4. *Sound risk management practices.* The proposed amendment should have no effect, from the standpoint of imposing costs or creating benefits, on sound risk management practices.

5. *Other public interest considerations.* The Commission believes that the proposed regulations are beneficial in that they should encourage improvements to future systems of electronic authorization and streamline the timeliness of delivery and electronic accessibility of notices to and by the Commission and NFA as well as allow the Commission and NFA to retain such reports in a more streamlined manner.

After considering these factors, the Commission has determined to propose the amendments discussed above. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposal with their comment letters.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Reporting and recordkeeping requirements.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4f, 4g and 8a(5) thereof, 7 U.S.C. 6f, 6g and 12a(5), the Commission hereby proposes to amend 17 CFR part 1 as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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, as amended by the Commodity Futures Modernization Act of 2000, appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000).

2. Section 1.10 is amended by removing paragraph (b)(2)(iii) and revising paragraphs (b)(2)(i), (b)(2)(ii)(A), (b)(3), (c)(1) and (c)(2), (d)(1)(ii), (d)(4)(iii), and (h) to read as follows:

§ 1.10 Minimum financial requirements for futures commission merchants and introducing brokers.

* * * * *

(b) * * *

(2)(i) Except as provided in paragraphs (b)(3) and (h) of this section, and except for an introducing broker operating pursuant to a guarantee agreement which is not also a securities broker or dealer, each person registered as an introducing broker must file a Form 1-FR-IB semiannually as of the middle and the close of each fiscal year. Each Form 1-FR-IB must be filed no later than 17 business days after the date for which the report is made.

(ii)(A) In addition to the financial reports required by paragraph (b)(2)(i) of this section, each person registered as an introducing broker must file a Form 1-FR-IB as of the close of its fiscal year which must be certified by an independent public accountant in accordance with § 1.16 no later than 90 days after the close of each introducing broker's fiscal year: Provided, however, that a registrant which is registered with the Securities and Exchange Commission as a securities broker or dealer must file this report not later than the time permitted for filing an annual audit report under § 240.17a-5(d)(5) of this title.

* * * * *

(3) The provisions of paragraphs (b)(1) and (b)(2) of this section may be met by any person registered as a futures commission merchant or as an introducing broker who is a member of a designated self-regulatory organization and conforms to minimum financial standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations, or resolutions and approved by the Commission pursuant to Section 4f(b) of the Act and § 1.52: *Provided, however,* That each

such registrant shall promptly file with the Commission a true and exact copy of each financial report which it files with such designated self-regulatory organization.

* * * * *

(c) *Where to file reports.* (1) Form 1-FR filed by an introducing broker pursuant to paragraph (b)(2) of this section need be filed only with, and will be considered filed when received by, the National Futures Association. Other reports or information provided for in this section will be considered filed when received by the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located and by the designated self-regulatory organization, if any; and reports or other information required to be filed by this section by an applicant for registration will be considered filed when received by the National Futures Association. Any report or information filed with the National Futures Association pursuant to this paragraph shall be deemed for all purposes to be filed with, and to be the official record of, the Commission.

(2)(i) Except as provided in the last sentence of this subparagraph, all filings or other notices prepared by a futures commission merchant pursuant to this section may be submitted to the Commission in electronic form using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission, if the futures commission merchant or a designated self-regulatory organization has provided the Commission with the means necessary to read and to process the information contained in such report. A Form 1-FR required to be certified by an independent public accountant in accordance with § 1.16 which is filed by a futures commission merchant must be filed in paper form and may not be filed electronically.

(ii) Except as provided in paragraph (h) of this section, all filings or other notices or applications prepared by an introducing broker or applicant for registration as an introducing broker or futures commission merchant pursuant to this section must be filed electronically in accordance with electronic filing procedures established by the National Futures Association. In the case of a Form 1-FR-IB that is required to be certified by an independent public accountant in accordance with § 1.16, a paper copy of any such filing with the original manually signed certification must be

maintained by the introducing broker or applicant for registration as an introducing broker in accordance with § 1.31.

* * * * *

(d) * * *

(1) * * *

(ii) Statements of income (loss) and a statement of changes in ownership equity for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made;

* * * * *

(4) * * *

(iii) In the case of a Form 1-FR filed via electronic transmission in accordance with procedures established by or approved by the Commission, such transmission must be accompanied by the user authentication assigned to the authorized signer under such procedures, and the use of such user authentication will constitute and become a substitute for the manual signature of the authorized signer for the purpose of making the oath or affirmation referred to in this paragraph.

* * * * *

(h) *Filing option available to a futures commission merchant or an introducing broker that is also a securities broker or dealer.* Any applicant or registrant which is registered with the Securities and Exchange Commission as a securities broker or dealer may comply with the requirements of this section by filing (in accordance with paragraphs (a), (b), (c), and (j) of this section) a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or Part II CSE (FOCUS Report), in lieu of Form 1-FR; *Provided, however,* That all information which is required to be furnished on and submitted with Form 1-FR is provided with such FOCUS Report; and *Provided, further,* That a certified FOCUS Report filed by an introducing broker or applicant for registration as an introducing broker in lieu of a certified Form 1-FR-IB must be filed according to National Futures Association rules, either in paper form or electronically, in accordance with procedures established by the National Futures Association, and if filed electronically, a paper copy of such filing with the original manually signed certification must be maintained by such introducing broker or applicant in accordance with § 1.31.

* * * * *

3. Section 1.12 is amended by:

a. Revising paragraphs (a)(2) and

(i)(1);

b. Removing paragraph (a)(3); and

c. Adding paragraph (i)(3).

The revisions and addition read as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

(a) * * *

(2) Provide together with such notice documentation in such form as necessary to adequately reflect the applicant's or registrant's capital condition as of any date such person's adjusted net capital is less than the minimum required. The applicant or registrant must provide similar documentation for other days as the Commission may request.

* * * * *

(i)(1) Every notice and written report required to be given or filed by this section (except for notices required by paragraph (f) of this section) by a futures commission merchant or a self-regulatory organization must be filed with the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located, with the principal office of the Commission in Washington, DC, with the designated self-regulatory organization, if any, and with the Securities and Exchange Commission, if such registrant is a securities broker or dealer. Every notice and written report required to be given or filed by this section by an applicant for registration as a futures commission merchant must be filed with the National Futures Association (on behalf of the Commission), with the designated self-regulatory organization, if any, and with the Securities and Exchange Commission, if such applicant is a securities broker or dealer. Any notice or report filed with the National Futures Association pursuant to this paragraph shall be deemed for all purposes to be filed with, and to be the official record of, the Commission.

* * * * *

(3) Every notice or report required to be provided in writing to the Commission under this section may, in lieu of facsimile, be filed via electronic transmission using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission. Any such electronic submission must clearly indicate the registrant or applicant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a

substitute for the manual signature of the authorized signer.

* * * * *

Issued in Washington, DC on October 6, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9-24480 Filed 10-9-09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2009-0620; FRL-8957-1]

Revisions to the California State Implementation Plan, San Diego Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Diego Air Pollution Control District portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from cold solvent cleaning and vapor degreasing operations. We are proposing to approve two local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by November 12, 2009.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2009-0620, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

2. *E-mail:* steckel.andrew@epa.gov.

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an "anonymous access" system, and EPA will not know your identity or contact information

unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947-4126, law.nicole@epa.gov.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: SDAPCD Rule 67.6.1 and SDAPCD Rule 67.6.2. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: August 21, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E9-24454 Filed 10-9-09; 8:45 am]

BILLING CODE 6560-50-P