Wentzville, Missouri, extending upward from 700 feet above the surface. The cancellation of this SIAP on April 23, 1996, at Wentzville Airport has made this proposal necessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12886; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 CFR 11034: February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation be reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E areas extending upward from 700 feet or more above the surface of the Earth.

* * * * *

ACE MO E5 Wentzville, MO [Removed]

* * * * *

Issued in Kansas City, MO, on January 13, 1997.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division Central Region.

[FR Doc. 97–2421 Filed 1–30–97; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 145 and 147

Financial Reporting and Debt-Equity Ratio Requirements for Futures Commission Merchants and Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is amending several provisions of its Rule 1.10 which governs financial reporting requirements for futures commission merchants (FCMs) and introducing brokers (IBs). The amendments require that financial reports which need not be certified by an independent public accountant be filed within 17 business days of the end of the reporting period (generally the end of a month, a quarter or a six-month period), rather than within 45 calendar days as previously required. The amendments provide a phase-in period such that registrants have 30 calendar days from the end of the reporting period within which to file their financial reports for reporting periods ending on or between June 30, 1997 and December 31, 1997. Certified financial reports will continue to be required to be filed within 90 calendar days of the fiscal year end, rather than 60 days as proposed, except that firms which are also registered as securities broker-dealers will be required to file their certified year end reports with the Commission at the same time they are required to file with the Securities and Exchange Commission (SEC), which is 60 days after the year end. Further, all registrants will now be required to file an uncertified financial report with the Commission for the final quarter (or semiannual period in the case of IBs) of each fiscal year within 17 business days (or 30 calendar days during the phase-in period) from the end of the quarter or semiannual period, as discussed above. Monthly capital computations required under Rule 1.18(b) also will be required to be available for inspection within 17 business days from month end, rather than 10 business days as proposed, with an initial phase-in period that will allow firms to continue to prepare the computations within 30 calendar days, as currently required. In addition, the Commission is deleting the provision which permits a self-regulatory organization (SRO) to allow its member FCMs to file financial reports on a semiannual rather than a quarterly basis. Further, the Commission is amending the debt-equity ratio rule such that the 30 percent minimum equity requirement would apply to all of a firm's capital, rather than only to that portion of a firm's capital necessary to meet the minimum financial requirement.

EFFECTIVE DATE: June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street N.W., Washington, DC 20581. Telephone: (202) 418–5439.

SUPPLEMENTARY INFORMATION:

I. Financial Reporting Requirements for FCMs and IBs

A. Background

On February 26, 1996, the Commission published for comment proposed amendments to several of its financial reporting requirements for FCMs and IBs set forth in Commission Rule 1.10 and to the Commission's debt-equity ratio requirement set forth in Rule 1.17(d) (the ''Proposals'').[1] These proposed rule amendments were intended to conform the Commission's rules with those of the SEC as part of the Commission's ongoing efforts to harmonize its rules with those of the SEC to the extent practicable. These amendments are part of a series of rulemaking proceedings related to the discussions at the Commission's roundtable on capital issues held in September 1995.[2] At that roundtable, the general consensus among the industry and academic experts present was that the Commission should conform its rules concerning the financial reporting cycle and debt-equity ratio requirements with those of the SEC.

The Proposals were: (1) To reduce the current time periods (a) for filing uncertified financial reports from 45 (or 30, for FCMs subject to monthly reporting under ''early warning'' requirements) calendar days to 17 business days, (b) for filing certified financial reports from 90 to 60 calendar days, and (c) for preparing monthly capital computations from 30 calendar to 10 business days; (2) to delete the provisions which (a) permit an SRO to allow member FCMs to file financial reports semiannually rather than quarterly, (b) require a guaranteed IB (IBG) to file a copy of a guarantee agreement with the Commission, and (c)

[1] 61 FR 7080 (Feb. 26, 1996).

[2] See 61 FR 19177 (May 1, 1996).

permit an IB which is also a country elevator to use a compilation report prepared in accordance with requirements of the U.S. Department of Agriculture in lieu of Form 1–FR–IB; and (3) to amend the debt-equity ratio rule to apply the 30 percent minimum equity requirement to all of a firm's capital.

The 30 day public comment period on the Proposals expired on March 27, 1996. The Commission received 22 written comments on the Proposals, including 12 from FCMs, three from contract markets, three from trade associations, three from accounting firms, and one from a bank that has a subsidiary registered as an independent IB (IBI). In general, most commenters voiced concerns about the impact of reduced time periods within which to file financial reports on the business operations of firms and on the accuracy of the reports prepared. A number of the commenters proposed alternative filing periods to those contained in the Proposals. These comments and alternatives are discussed more fully below.

The Commission has considered carefully the comments received. The Commission has determined generally to adopt as proposed the amendments which require those financial reports which need not be certified by an independent public accountant to be filed within 17 business days of the end of the reporting period, rather than within 45 calendar days as currently required. As the Commission realizes that certain firms may require a period of time to prepare for the change in reporting deadline, the final rules do not become effective until June 30, 1997 and thereafter are phased in over a six-month period. This phase-in period provides that for reporting periods ending on or between June 30, 1997 and December 31, 1997, financial reports which are not required to be certified must be filed within 30 calendar days of the end of the reporting period.

With respect to those financial reports which must be certified by an independent public accountant, the Commission has determined, based upon a review of the comments, not to adopt at this time the provision of the Proposals that would have reduced from 90 calendar days to 60 calendar days the time period within which registrants must file their fiscal year end financial reports. Instead, the Commission has determined to require registrants to file an uncertified financial report for the final quarter (or semiannual period, in the case of IBIs) of the fiscal year within 17 business days (or 30 calendar days for fiscal years ending on or between June 30, 1997 and December 31, 1997) and continue to allow 90 days within which registrants may file their annual certified reports. If material differences exist between the capital computation and the segregation and secured amount schedules contained in the certified report and the uncertified fourth quarter (or, for IBIs, the second semiannual) report, the certified report must include a reconciliation with appropriate explanations. If no such material differences exist, there must be a statement so indicating. Further, the Commission will require firms that are also registered with the SEC and thereby required to file certified financial reports within 60 days of the fiscal year end to file copies of such reports simultaneously with the Commission.

The Commission also has determined, based upon a review of the comments and its own reconsideration of the issue, to modify its proposed amendment to Rule 1.18(b) concerning the completion of monthly capital computations, such that monthly capital computations will be required to be completed and available for inspection within 17 business days from month end rather than within 10 business days as proposed or within 30 calendar days as required currently. In so doing, the Commission reminds registrants that the Commission interprets Rule 1.17(a)(4) to require FCMs and IBIs to have a system in place to determine whether they are in capital compliance at all times and to be able on demand of the Commission or an SRO to prepare a *pro forma* calculation subject to the Commission's or SRO's discretion to permit up to 10 days to complete the same. The Commission will provide, similar to what is provided for uncertified financial reports discussed above, a phase-in period during which 30 calendar days will continue to be allowed for preparation of the monthly computation. Further, the Commission has determined to adopt its proposal to delete the provision which permits an SRO to allow its member FCMs to file financial reports on a semiannual rather than a quarterly basis. Finally, the Commission has determined to adopt as proposed the amendment to Rule 1.17(d), the Commission's debt-equity ratio rule, such that the 30 percent minimum equity requirement will apply to all of a firm's capital rather than only to that portion of a firm's capital necessary to meet the minimum financial requirement.

B. Rule Amendments

1. Financial Reporting Cycle

The Commission proposed to amend its financial reporting requirements for FCMs and IBIs such that interim unaudited financial reports would be due within 17 business days, rather than the current 45 calendar days, of the ''as of'' date, and the certified financial report as of the fiscal year end would be due within 60, rather than 90, calendar days of the fiscal year end.[3] Sixteen of the commenters addressed the issues concerning a shortening of the filing period for uncertified reports while eighteen addressed the issues concerning a shortening of the filing period for certified reports. Two commenters addressed all of the proposed changes generally. One commenter, a bank with an IBI subsidiary, supported all of the Commission's amendments stating, among other things, that financial reporting should be accelerated so as to prevent the reporting of stale data and that conforming Commission regulations with those of the SEC would ease the regulatory expense and burden of compliance. The remaining commenters, however, were concerned generally about the effect that shortening the filing deadlines would have upon firm resources and the accuracy of financial reports.

As noted above, participants in the September 1995 roundtable on capital, including representatives from the industry SROs, urged the Commission to adopt the rule changes embodied in the Proposals.

a. Uncertified Reports. With respect to uncertified filings, ten commenters cited an increase in hardship as a result of necessary workload reallocations and an increase in expense due to the potential need for hiring additional staff as reasons for not changing the filing deadline. Four commenters stated that Commission Rule 1.12(g), which requires notification by an FCM within two business days of a twenty percent or greater reduction in the firm's net capital compared to that last reported in a financial report filed with the Commission, provides adequate timely information of an FCM's financial difficulty. Additionally, ten commenters, including the three contract markets, two trade associations and five FCMs, suggested that a 30 calendar day filing deadline would be more reasonable.

Although the Commission realizes that a shortening of the time period in

[3] *See* proposed amendments to Commission Rules 1.10(b)(1) (i) and (ii), 61 FR 7080, 7085–86.

which to file uncertified financial reports may require a period of adjustment for some firms, the Commission believes that this additional burden is warranted when weighed in the balance with the need to obtain financial information in a timely manner. Indeed, exchange traded derivatives positions change frequently; hence, the more current relevant financial information is the more useful it is in appropriately monitoring financial integrity on an ongoing basis. It would therefore be anomalous for FCMs to have longer reporting timeframes than securities broker-dealers. As a change to a 17 business day filing period will conform the Commission's rules with those of the SEC in this area, no additional burden should be created for the large number of firms that are dually registered with the Commission and the SEC.[4]

Under these final rules, interim uncertified financial reports will be due within 17 business days (about 24 calendar days) of the end of the reporting period. However, in light of the potential adjustment necessary for some firms to come into full compliance with this rule change, the rules provide a phase-in period, whereby firms will have 30 calendar days from the end of the reporting period in which to file their interim reports for reporting periods ending on or between June 30, 1997 and December 31, 1997, the first six months during which the amendments are effective. Two trade associations commented that should the Commission and the SEC replace Commission Form 1–FR and the SEC Financial and Operational Combined Uniform Single (FOCUS) Report with a single financial reporting form that would be adopted by both agencies, any greater detail that might be required in such a form might make a 17 business day filing deadline difficult to comply with. In this regard, the Commission notes that if such a combined form were to require statements and schedules in addition to those currently required, the agencies intend to revisit the filing timetables at least with respect to the additional schedules but would continue to pursue harmonization of filing deadlines to the extent practicable.[5]

Similarly, as proposed, the Commission will require that FCMs subject to the ''early warning'' requirement[6] of monthly financial reports, which are now due within 30 calendar days of the month end, file such reports within 17 business days of the month end. This requirement is also being phased in so that for months ending on or between June 30, 1997 and December 31, 1997, the filing requirement will be 30 calendar days as at present.[7] One trade association commenter objected to this proposed amendment. However, the Commission believes that FCMs subject to the early warning requirements—that is, FCMs with adjusted net capital of less than 150 percent of the minimum requirement—should not have a longer period within which to file uncertified financial reports than is provided generally.[8] This is because such firms are intended to be subject to increased regulatory and self-regulatory scrutiny.

The only amendments with respect to filing uncertified financial reports that are not being phased in concern the uncertified financial report which a new applicant, or an IBG seeking to become an IBI, can file if it also submits a certified financial report that is no more than one year old. An uncertified report accompanying a certified report which is less than one year old in such circumstances must be filed within 17 business days of the ''as of'' date, rather than the current 45 calendar days. See amendments to Rules 1.10 (a)(2)(i)(B), (a)(2)(ii)(B), (j)(8)(i)(B) and (j)(8)(ii)(B). These are alternative filings made at the firm's option in lieu of filing only a recent certified financial report. Thus, the firm has some choice as to the timing of the uncertified financial statement in this context. Moreover, this option is likely to be used by a firm already making regulatory filings which require annual certified financial statements, such as a securities broker-dealer. None of the commenters specifically addressed this aspect of the Proposals. The Commission has therefore determined to adopt the amendments to Rules 1.10 (a)(2)(i)(B), (a)(2)(ii)(B), (j)(8)(i)(B) and (j)(8)(ii)(B) as proposed.

b. Certified Reports. With respect to the Commission's proposed rule amendment to shorten the time period for filing annual certified financial reports, commenters voiced similar concerns to those raised concerning shortening the time period for filing uncertified interim reports. Specifically, six commenters stated that firm resources would have to be shifted to meet new deadlines and small firms would not have sufficient staff to meet these new demands. Eight commenters, including the three contract market commenters and two trade associations, noted that adopting the proposal would cause audit expenses to increase as a result of a greater demand for accounting services during peak periods and the need for additional in-house staff. As an alternative to the Commission's proposal, two contract markets and an FCM suggested that the Commission could meet its objective of obtaining more timely financial information by requiring firms to file an unaudited financial statement within 30 or 45 days of the fiscal year end followed by filing the certified report within 90 days.[9] One of the contract markets and the FCM suggested that firms provide a reconciliation between their certified and uncertified reports. Two additional commenters suggested that if the Proposal is adopted, the Commission should permit an automatic 30 day extension upon a request which includes an unaudited fourth quarter financial report and an auditor's statement that based upon the part of the audit completed to date, there are no known material inadequacies in the firm's accounting system or internal controls or failures to comply with the Commission's minimum capital or segregation requirements.

Based upon the Commission's review of the comments received and reconsideration of this aspect of the Proposals, the Commission has determined to leave unchanged the time period within which FCMs and IBIs must file their annual certified financial reports. Thus, FCMs and IBIs continue to have 90 calendar days within which to file their annual certified financial statements, except for those firms already filing certified financial reports with the SEC within 60 calendar days because they are securities broker-dealers. Such firms will be required, pursuant to provisos added to paragraphs (b)(1)(ii) and (b)(2)(ii)(A) of Rule 1.10, to file copies of such certified reports with the Commission at the same time the reports are filed with the SEC. The Commission does not believe this will create any added burden for such firms since they have been filing certified reports with the SEC on the

[4] As of November 30, 1996, almost one-half of FCMs (115 out of 240) and more than one-third of IBIs (141 out of 376) were dually registered with the SEC.

[5] See 61 FR 7080, 7081 n.6.

[6] See 61 FR 7080, 7081–82.

[7] This amendment is adopted as part of Rule 1.12(b)(4). In the Proposals, this amendment was proposed as an amendment to Rule 1.12(b)(3) but when the Commission amended Rule 1.12 in May 1996, it redesignated Rule 1.12(b)(3) as Rule 1.12(b)(4). *See* 61 FR 7080, 7081 n.8; 61 FR 19177, 19185.

[8] See 61 FR 7080, 7083.

[9] Both the Chicago Mercantile Exchange (CME) and Chicago Board of Trade (CBT) require the filing of an uncertified financial report for the fourth quarter in addition to the certified financial report as of the fiscal year end. More than 40 percent of FCMs are members of either CME or CBT.

shorter timeframe. Further, paragraphs (b)(1)(i) and (b)(2)(i) of Rule 1.10 have been amended to make clear that each FCM must file an uncertified report covering the firm's fourth quarter within 17 business days of the end of the quarter and each IBI must file an uncertified report covering the firm's second semiannual period within 17 business days of the end of the period, respectively. The Commission has also redesignated paragraph (d)(2)(vi) of Rule 1.10 as paragraph (d)(2)(vii)[10] and added a new paragraph (d)(2)(vi) to require that the year end certified financial report, as suggested by certain commenters as noted above, contain a reconciliation between that report and the fourth quarter (or, in the case of IBIs, second semiannual) uncertified report if material differences exist in the net capital computation, segregation schedules or secured amount schedules. The reconciliation must include appropriate explanations. If there are no material differences between the reports, there must be a statement so indicating in the certified report. This is consistent with SEC rules.[11] In conformity with the Commission's amendments with respect to other uncertified filings, Rules 1.10 (b)(1)(i) and (b)(2)(i) provide a phase-in period such that for quarters (with respect to FCMs) or semiannual periods (with respect to IBIs) ending on or between June 30, 1997 and December 31, 1997, firms have 30 calendar days from the end of the quarter or semiannual period within which to file their uncertified reports.

2. Monthly Computation

The monthly computation of adjusted net capital and minimum financial requirement which FCMs and IBIs must prepare in accordance with Commission Rule 1.18 is currently required to be made available for inspection within 30 days. The Commission proposed to shorten this time period to 10 business days since these computations do not involve the preparation of all of the statements and schedules included in a Form 1–FR–FCM or a Form 1–FR–IB. The Commission also noted in its proposal that this shorter time period would conform the requirement pertaining to monthly capital computations to the SEC's requirement for filing Part I of the FOCUS Report.

The Commission received fourteen comment letters concerning the proposed amendment of Rule 1.18. All of these commenters stated that 10 business days is too short a period of time in which to prepare the monthly computation. Five commenters noted that a formal capital computation requires the same review and reconciliation process that is needed to prepare a financial report and, therefore, the time period for completing such a computation should not be any shorter than that provided for filing a financial report. Additionally, two contract markets, two trade associations and an FCM stated that securities broker-dealers who file Part I of FOCUS are often provided an extension of time through their respective designated examining authority,[12] such that the filing of their monthly capital computations is generally due within 17 business days from month end. In consideration of these comments, Rule 1.18(b) as adopted provides that firms must complete and make available for inspection formal computations of their adjusted net capital and minimum financial requirements within 17 business days from month end. As is true with respect to the Commission's other amendments discussed above, amended Rule 1.18(b) contains a phase-in period, such that firms continue to have 30 calendar days from month end in which to complete their monthly computations for all months ending on or before December 31, 1997.

The Commission also notes that an FCM or IB must maintain compliance with the Commission's minimum financial requirements at all times. Thus, although Rule 1.18(b) provides 17 business days for an FCM or IBI to complete a formal capital computation, a firm must nonetheless be able to demonstrate its compliance with the Commission's minimum capital requirement prior to this deadline if requested by the Commission.[13] The Commission encourages the SROs to use monthly calculations in their financial monitoring systems and notes that the CME, CBT and the New York Stock Exchange, Inc. now require clearing member firms to file as well as to calculate capital monthly.

3. Other Amendments

The Commission further proposed to delete that portion of Rule 1.52(a) which permits an SRO to allow its member FCMs to file financial reports semiannually rather than quarterly. In the Proposals, the Commission stated that it believes this rule amendment is consistent with the concept that the existing reporting timeframe should be accelerated so that the financial data reported and used by regulators for monitoring purposes is reasonably current. Additionally, the Commission noted that relatively few firms (less than ten percent of FCMs, approximately 20 in all) are now filing only semiannually, so the rule amendment would not cause undue hardship for a substantial number of FCMs. All six of the commenters who addressed this aspect of the Proposals supported this rule amendment and the Commission is adopting it as proposed.

The Commission also proposed two other minor amendments to the financial reporting requirements in Rule 1.10, both of which pertain to IBs. Currently, an applicant for registration as an IB that intends to operate pursuant to a guarantee agreement with an FCM must file a copy of the guarantee agreement with the regional office of the Commission nearest the principal place of business of the applicant (except that an applicant under the jurisdiction of the Commission's Western Regional Office in Los Angeles must file a copy with the Commission's Southwestern Regional Office in Kansas City).[14] This requirement is in addition to the requirement to file the original of the guarantee agreement with the registration application submitted to National Futures Association (NFA). The Commission proposed to amend Rule 1.10(c) to eliminate the requirement that a copy of a guarantee agreement be filed with a Commission regional office. An IB's status as an IBG can be readily discerned by Commission staff from contacting NFA's Information Center or by accessing the registration database. An IBG has no ongoing financial reporting requirements, so the Commission believes that no purpose is served by continuing to maintain copies of guarantee agreements in its regional offices. The Commission further believes that this amendment to Rule 1.10(c) will ease filing burdens on IB applicants and record maintenance burdens on the Commission's staff. The Commission received no comments specifically addressing this issue and has determined to adopt the amendment to Rule 1.10(c) as proposed.[15]

In addition, the Commission proposed to amend the financial reporting

[10] The redesignated paragraph requires that a certified financial report include ''[i]n addition to the information expressly required, such further material information as may be necessary to make the required statements not misleading.''

[11] See 17 CFR 240.17a–5(d)(4) (1996).

[12] The Commission has confirmed this to be the case.

[13] 61 FR 7080, 7081 & n.3.

[14] The geographic coverage of jurisdiction of the Commission's regional offices is set forth in 17 CFR 140.2 (1996).

[15] The Commission has separately proposed further amendment of Rule 1.10(c) as part of rule amendments concerning electronic filing of financial reports and attestation requirements related thereto. 61 FR 55235 (Oct. 25, 1996).

requirements to eliminate Rule 1.10(i). Rule 1.10(i) provides that an IBI or an applicant which is also a country elevator can satisfy its financial reporting obligation by filing, in lieu of filing a Form 1–FR–IB, a copy of a compilation report of financial statements of warehousemen for purposes of Uniform Grain Storage Agreements, prepared in accordance with requirements of the U.S. Department of Agriculture. This alternative filing provision was adopted when the Commission first adopted rules to govern IBs in 1983[16] and has never been utilized. No comments specifically addressed this issue. The Commission believes that it is appropriate to delete this provision as a means of streamlining and simplifying Rule 1.10. References to Rule 1.10(i) in other Commission rules have likewise been eliminated.[17]

II. Amendments to Debt-Equity Ratio Requirements

Commission Rule 1.17(d) sets forth the debt-equity ratio requirement, which states that at least 30 percent of an FCM's or IBI's required debt-equity total must consist of equity capital.[18] Thus, if an FCM's required debt-equity total amount is $1 million, it must maintain equity capital as defined in the Commission's rules of $300,000. No matter how much adjusted net capital is actually maintained by an FCM or IBI, the thirty percent equity requirement currently applies only to the amount of required debt-equity total. Accordingly, if an FCM has a $1 million adjusted net capital requirement and actually maintains $5 million in adjusted net capital (*i.e.*, it has $4 million in ''excess'' adjusted net capital), the entire $4 million amount above the minimum requirement could consist of debt subject to satisfactory subordination agreements in accordance with Commission Rule 1.17(h).[19]

When the Commission originally proposed what is now Rule 1.17(d) in 1977, the debt-equity ratio requirement was patterned upon the SEC rule and would have applied to a firm's debt-equity total.[20] However, in response to comments that ''it would be inappropriate to penalize a firm that maintains capital in the form of satisfactory subordination agreements, which is in excess of the minimum required by the regulations,'' the Commission revised its proposal. As adopted in 1978, Rule 1.17(d) provides that the required debt-equity total to which the 30 percent equity capital requirement applies means a firm's debt-equity total less its excess adjusted net capital.[21]

Several of the panelists at the capital roundtable on September 18, 1995 urged the Commission to pursue greater harmonization between CFTC and SEC financial rules and related reporting requirements and the debt-equity ratio requirement was one area referred to in this regard. The Commission also notes that the general international standard is to apply the debt-equity ratio requirement to all of a firm's capital.[22] The Commission believes that it is important for its rules to conform to international standards with respect to the quality of capital.

Accordingly, in light of these developments and its own reconsideration of the issue, the Commission determined to propose an amendment to Rule 1.17(d) to require that the 30 percent debt-equity ratio requirement apply to an FCM's or IBI's debt-equity total.[23] In making this proposal, the Commission noted that a large proportion of FCMs and IBIs are also securities brokers or dealers and thus already subject to the SEC rule concerning the debt-equity ratio.[24]

The Commission further noted that Rule 1.17(d)(1) provides that certain subordinated debt may qualify as equity capital if specified conditions are met, in addition to those which apply to subordinated debt in general. These additional conditions are: (1) The lender must be a partner or stockholder of the FCM or IBI; (2) the initial term of the debt must be at least three years, and there must be a remaining term of not less than twelve months;[25] (3) the governing subordination agreement does not contain most of the otherwise permissible provisions relating to accelerated maturity; (4) the governing subordination agreement allows no special prepayment of the debt (*i.e.*, prepayment before one year from the date such subordination agreement becomes effective); and (5) the debt in question is maintained as equity capital subject to the provisions on withdrawal of equity capital contained in Commission Rule 1.17(e). If a firm is organized as a partnership, however, additional conditions (3) and (4) need not be met for subordinated debt to qualify as equity capital, if the partnership agreement provides that the capital contributed pursuant to a satisfactory subordination agreement as defined in Commission Rule 1.17(h) shall in all respects be partnership capital subject to the provisions restricting the withdrawal thereof set forth in Commission Rule 1.17(e).

Eight commenters addressed this aspect of the Commission's Proposals and all of them supported the amendment to Rule 1.17(d) to require application of the 30 percent debt-equity ratio requirement to a firm's debt-equity total. Based upon these comments and the Commission's further consideration of this issue, the amendment to Rule 1.17(d) is being adopted as proposed.

The Commission also addressed another issue in connection with the debt-equity ratio requirement in the Proposals, in response to a letter submitted by the CME on behalf of the Intermarket Financial Surveillance Group, an organization composed of representatives of U.S. commodity and securities organizations. The CME letter, addressed to the Commission's Division of Trading and Markets and dated October 31, 1995, supported the goal of conforming the rules of the Commission and the SEC concerning the debt-equity

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[16] 48 FR 35248, 35263, 35282 (Aug. 3, 1983).

[17] See deletions of Rules 1.10(g)(3), 145.5(d)(1)(i)(G) and 147.3(b)(4)(i)(A)(*7*) as well as amendments to Rules 1.10(g)(5), 1.18(a) and (b), and 3.33(c)(1).

[18] In addition to certain subordinated debt as described more fully below, equity capital includes the following:

(1) In the case of a corporation, the sum of its par or stated value of capital stock, paid in capital in excess of par, retained earnings, unrealized profit and loss, and other capital accounts;

(2) In the case of a partnership, the sum of its capital accounts of partners (inclusive of such partners' commodity interest and securities accounts subject to the provisions of Rule 1.17(e) concerning restrictions on withdrawals of equity capital), and unrealized profit and loss; and

(3) In the case of a sole proprietorship, the sum of its capital accounts and unrealized profit and loss.

''Debt-equity total'' means equity capital as described above plus the outstanding principal amount of subordinated debt which does not qualify as equity capital. The ''required debt-equity total'' means debt-equity total less the amount by which a firm's adjusted net capital exceeds the minimum required. 17 CFR 1.17(d)(1996).

[19] 17 CFR 1.17(h) (1996), as amended by 61 FR 19177, 19186–87 (May 1, 1996).

[20] 42 FR 27166, 27177 (May 26, 1977).

[21] 43 FR 39956, 39965, 39976 (Sept. 8, 1978).

[22] This is the recommendation of Working Party No. 3 of the Technical Committee of the International Organization of Securities Commissions (IOSCO). See Report of the Technical Committee of IOSCO, ''Capital Requirements for Multinational Securities Firms,'' XV Annual Conference of IOSCO, Santiago, Chile 1990.

[23] 61 FR 7080, 7083–84, 7086.

[24] The Commission also noted that the SEC definition of equity capital does not include, in the case of a partnership, partners' securities accounts. See 17 CFR 240.15c3–1(d)(1996).

[25] Subordinated debt entered into today with a maturity date of December 31, 2000 could, therefore, qualify as equity capital if all other requirements were met. On January 1, 2000, however, such subordinated debt would no longer be counted as equity capital unless an extension of the maturity date had been agreed to by the parties, since the remaining term of the debt would be less than one year at that time.

ratio requirement. CME also requested in that letter, and in a similar letter of the same date to the SEC's Division of Market Regulation, that the financial rules of each agency be amended such that goodwill net of amortization could be subtracted from the denominator when a firm calculates its debt-equity ratio.[26] Since the SEC had not yet made such a change in its rule and since the Commission's intention in making its February 1996 proposal was to conform its rule to that of the SEC concerning the debt-equity ratio requirement, the Commission did not propose to incorporate the CME's request in the proposed amendment to Rule 1.17(d). However, the Commission specifically requested comment upon the CME's suggestion and whether the Commission should adopt such a rule amendment in conjunction with or irrespective of action taken by the SEC. The Commission also noted that its staff would discuss this matter with staff of the SEC.

In addition to the CME, two other futures exchanges, the CBT and the New York Mercantile Exchange (NYMEX), and an FCM supported elimination of goodwill from the debt-equity calculation.[27] However, the Securities Industry Association (SIA), the trade association for securities firms, commented that it is not appropriate for the Commission to subtract goodwill from the debt-equity calculation because the number of firms reporting goodwill as an asset is insignificant and to do so would create disparity with the SEC.

The Commission had noted, when it issued the Proposals, that information provided by CME based upon studies of several SROs indicated that the number of firms reporting goodwill as an asset was quite small.[28] The Commission understood that the original requests concerning goodwill were made primarily in an effort to accommodate certain large firms dually registered as FCMs and as securities broker-dealers. Discussions between Commission staff and SEC staff have revealed that the SEC continues to consider the matter but an amendment to the SEC's rule in this area is not imminent. Further, as noted above, the securities industry's trade association has commented in opposition to the elimination of goodwill from the debt-equity calculation. Accordingly, the Commission has determined not to amend Rule 1.17(d) in this regard at this time. The Commission nonetheless believes that if goodwill is reported as an asset the better rule is to subtract it from the denominator when a firm calculates its debt-equity ratio and the Commission intends to continue to pursue this matter with the SEC.

III. Ongoing Process

The Commission's adoption of the amendments discussed herein and its adoption of amendments in May 1996 [29] accomplish the Commission's short term goals arising out of the September 1995 roundtable on capital. Some of the other issues discussed at that roundtable are necessarily longer term projects that will require further study, such as whether the second prong of the current minimum financial requirement, based upon four percent of the sum of segregated customer funds and the secured amount, should be amended in an effort to make an FCM's minimum adjusted net capital requirement reflect more closely the risks to an FCM caused by carrying open positions. The Commission intends to continue its consultation with industry representatives and other interested parties concerning the minimum financial and related reporting requirements.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments adopted herein would affect FCMs and IBIs. 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.[30]

With respect to IBs, the Commission has 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.[31] The amendments to Rules 1.10 and 1.18 relate to the time within which financial reports must be filed and monthly financial computations must be prepared. The requirements related to filing certified financial reports as of the fiscal year end will not be amended as proposed and the amendments being adopted to other provisions of the rules are to be phased in over a period of approximately one year so that firms can make any necessary adjustments. In addition, the amendment to Rule 1.17(d) for an IBI conforms the Commission's requirement to that of the SEC. More than one-third of the IBIs are also subject to the jurisdiction of the SEC and therefore the amendment to Rule 1.17(d) should have no impact on the financial operations of these IBIs. Thus, the Chairperson certifies that these amendments should not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

When publishing final rules, the Paperwork Reduction Act of 1995 (Pub. L. 104–13 (May 13, 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 Paperwork Reduction Act. In compliance with the Act, this final rule informs the public of:

(1) The reasons the information is planned to be and/or has been collected; (2) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency; (3) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden); (4) whether responses to the collection of information are voluntary, required to obtain or retain a benefit, or mandatory; (5) the nature and extent of confidentiality to be provided, if any; and (6) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

On February 26, 1996, the Commission published proposed rules dealing with this matter stating that the information collection burden would be unchanged if the rules were adopted as proposed. However, because the Commission has determined, in response to comments on the Proposals, to leave unchanged the filing requirement for the certified financial report due as of the fiscal year end and

[26] CME stated in its letters that it was making this request because, by definition, goodwill is an intangible asset acquired in a business combination which represents the excess ''going concern'' value over the fair value of a firm's net assets, it lacks separability from the firm itself, and its value is often indefinite, indeterminate and subject to wide fluctuation.

[27] NYMEX stated that such an amendment should only be adopted in conjunction with a similar amendment to the SEC's rule to assure consistent treatment.

[28] 61 FR 7080, 7084.

[29] These amendments covered (1) early warning reporting, (2) required minimum dollar amount of capital, (3) prepayment of subordinated debt, (4) gross collection of exchange-set margin for omnibus accounts, and (5) the capital charge on receivables from foreign brokers. 61 FR 19177.

[30] See 47 FR 18618, 18619 (Apr. 30, 1982).

[31] See 48 FR 35248, 35275–78 (Aug. 3, 1983).

to explicitly require an uncertified financial report as of the last quarter, the paperwork burden under Rule 1.10 will increase.

The Commission has submitted this rule and its associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection (3038–0024), including this final rule, is as follows:

Average burden hours per response: 18.00.

Number of Respondents: 1,662.00.

Frequency of response: 19.00.

The burden associated with this specific final rule is as follows:

Average burden hours per response: 4.00.

Number of Respondents: 500.00.

Frequency of response: 9.00.

Persons wishing to comment on the information required by this final rule should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street N.W., Washington, DC 20581, (202) 418–5160.

List of Subjects

17 CFR Part 1

Commodity futures, Minimum financial requirements.

17 CFR Part 3

Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 145

Freedom of information, Exceptions.

17 CFR Part 147

Sunshine Act, Exceptions.

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 amends Chapter I of Title 17 of the Code of Federal Regulations 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, 2a, 4, 4a, 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.

2. Section 1.10 is amended by revising paragraphs (a)(2)(i)(A) and (B), (a)(2)(ii)(A) and (B), (a)(3)(i), (a)(3)(ii)(A), (b)(1), (b)(2)(i), (b)(2)(ii)(A), (c) and (d)(2)(v), by redesignating paragraph (d)(2)(vi) as paragraph (d)(2)(vii) and by adding a new paragraph (d)(2)(vi), by revising paragraphs (d)(3), (f) heading, and (f)(1), by removing and reserving paragraph (g)(3), by revising paragraph (g)(5), by removing and reserving paragraph (i), and by revising paragraphs (j)(8)(i)(B) and (j)(8)(ii)(B) to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

(a) * * *

(2) * * *

(i) * * *

(A) A Form 1–FR–FCM certified by an independent public accountant in accordance with § 1.16 as of a date not more than 45 days prior to the date on which such report is filed; or

(B) A Form 1–FR–FCM as of a date not more than 17 business days prior to the date on which such report is filed and a Form 1–FR–FCM certified by an independent public accountant in accordance with § 1.16 as of a date not more than 1 year prior to the date on which such report is filed.

* * * * *

(ii) * * *

(A) A Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than 45 days prior to the date on which such report is filed; or

(B) A Form 1–FR–IB as of a date not more than 17 business days prior to the date on which such report is filed and a Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than 1 year prior to the date on which such report is filed; or

* * * * *

(3)(i) The provisions of paragraph (a)(2) of this section do not apply to any person succeeding to and continuing the business of another futures commission merchant. Each such person who files an application for registration as a futures commission merchant and who is not so registered in that capacity at the time of such filing must file a Form 1–FR–FCM as of the first month end following the date on which his registration is approved. Such report must be filed with the National Futures Association, the Commission and the designated self-regulatory organization, if any, not more than 17 business days after the date for which the report is made.

(ii) * * *

(A) Each such person who succeeds to and continues the business of an introducing broker which was not operating pursuant to a guarantee agreement, or which was operating pursuant to a guarantee agreement and was also a securities broker or dealer at the time of succession, who files an application for registration as an introducing broker, and who is not so registered in that capacity at the time of such filing, must file with the National Futures Association either a guarantee agreement with his application for registration or a Form 1–FR–IB as of the first month end following the date on which his registration is approved. Such Form 1–FR–IB must be filed not more than 17 business days after the date for which the report is made.

* * * * *

(b) *Filing of financial reports.* (1)(i) Except as provided in paragraphs (b)(3) and (h) of this section, each person registered as a futures commission merchant must file a Form 1–FR–FCM for each fiscal quarter of each fiscal year, including the final fiscal quarter of each fiscal year, unless the futures commission merchant elects, pursuant to paragraph (e)(2) of this section, to file a Form 1–FR–FCM for each calendar quarter of each calendar year, including the final calendar quarter of each calendar year. Each Form 1–FR–FCM must be filed no later than 17 business days after the date for which the report is made: *Provided, however,* That for each fiscal or calendar quarter ending between June 30, 1997 and December 31, 1997, inclusive, each Form 1–FR–FCM must be filed no later than 30 calendar days after the date for which the report is made.

(ii) In addition to the financial reports required by paragraph (b)(1)(i) of this section, each person registered as a futures commission merchant must file a Form 1–FR–FCM as of the close of its fiscal year (even if it files quarterly reports as of each calendar quarter) which must be certified by an independent public accountant in accordance with § 1.16 no later than 90 days after the close of each futures commission merchant'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.

(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 unless the introducing broker elects pursuant to paragraph (e)(2) of this section to file a Form 1–FR–IB semiannually as of the middle and the close of each calendar year. Each Form 1–FR–IB must be filed no later than 17 business days after the date for which the report is made: *Provided, however,* That for each reporting period ending between June 30, 1997 and December 31, 1997, inclusive, each Form 1–FR–IB must be filed no later than 30 calendar 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 (even if it files semiannual reports on a calendar year basis) 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.

* * * * *

(c) *Where to file reports.* The reports provided for in this section will be considered filed when received by the regional office of the Commission nearest the principal place of business of the registrant (except that a registrant under the jurisdiction of the Commission's Western Regional Office must file such reports with the South-western Regional Office) and by the designated self-regulatory organization, if any; and reports required to be filed by this section by an applicant for registration will be considered filed when received by the National Futures Association and by the regional office of the Commission nearest the principal place of business of the applicant (except that an applicant under the jurisdiction of the Commission's Western Regional Office must file such reports with the South western Regional Office): *Provided, however,* That information required of a registrant pursuant to paragraph (b)(4) of this section need be furnished only to the self-regulatory organization requesting such information and the Commission, and that information required of an applicant pursuant to paragraph (b)(4) of this section need be furnished only to the National Futures Association and the Commission: *And, provided further,* That any guarantee agreement entered into between a futures commission merchant and an introducing broker in accordance with the provisions of this section need be filed only with and will be considered filed when received by the National Futures Association.

(d) * * *

(2) * * *

(v) Appropriate footnote disclosures;

(vi) A reconciliation, including appropriate explanations, of the statement of the computation of the minimum capital requirements pursuant to § 1.17 and, for a futures commission merchant only, the statements of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer option accounts, and the statement of secured amounts and funds held in separate accounts for foreign futures and foreign options customers in accordance with § 30.7 of this chapter, in the certified Form 1–FR with the applicant's or registrant's corresponding uncertified most recent Form 1–FR filing when material differences exist or, if no material differences exist, a statement so indicating; and

* * * * *

(3) The statements required by paragraphs (d)(2)(i) and (d)(2)(ii) of this section may be presented in accordance with generally accepted accounting principles in the certified reports filed as of the close of the registrant's fiscal year pursuant to paragraphs (b)(1)(ii) or (b)(2)(ii) of this section or accompanying the application for registration pursuant to paragraph (a)(2) of this section, rather than in the format specifically prescribed by these regulations: *Provided,* the statement of financial condition is presented in a format as consistent as possible with the Form 1–FR and a reconciliation is provided reconciling such statement of financial condition to the statement of the computation of the minimum capital requirements pursuant to § 1.17. Such reconciliation must be certified by an independent public accountant in accordance with § 1.16.

* * * * *

(f) *Extension of time for filing uncertified reports.* (1) In the event a registrant finds that it cannot file its report for any period within the time specified in paragraphs (b)(1)(i), (b)(2)(i) or (b)(4) of this section or § 1.12(b) without substantial undue hardship, it may file with the principal office of the Commission in Washington, D.C., an application for an extension of time to a specified date which may not be more than 90 days after the date as of which the financial statements were to have been filed. The application must state the reasons for the requested extension and must contain an agreement to file the report on or before the specified date. The application must be received by the Commission before the time specified in paragraphs (b)(1)(i), (b)(2)(i) or (b)(4) of this section or § 1.12(b) for filing the report. Notice of such application must be given to the designated self-regulatory organization, if any, concurrently with the filing of such application with the Commission. Within ten calendar days after receipt of the application for an extension of time, the Commission shall: (i) Notify the registrant of the grant or denial of the requested extension; or (ii) indicate to the registrant that additional time is required to analyze the request, in which case the amount of time needed will be specified. (See § 1.16(f) for extension of the time for filing certified financial statements.)

* * * * *

(g) * * *

(3) [Reserved]

* * * * *

(5) The independent accountant's opinion and a guarantee agreement filed pursuant to this section will be deemed public information.

* * * * *

(i) [Reserved]

(j) * * *

(8) * * *

(i) * * *

(B) A Form 1–FR–IB as of a date not more than 17 business days prior to the date on which the report is filed and a Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than one year prior to the date on which the report is filed.

* * * * *

(ii) * * *

(B) A Form 1–FR–IB as of a date not more than 17 business days prior to the date on which the report is filed and a Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than one year prior to the date on which the report is filed.

* * * * *

3. Section 1.12 is amended by revising paragraph (b)(4) to read as follows:

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

* * * * *

(b) * * *

(4) For securities brokers or dealers, the amount of net capital specified in Rule 17a–11(b) of the Securities and Exchange Commission (17 CFR

240.17a–11(b)), must file written notice to that effect as set forth in paragraph (g) of this section within five (5) business days of such event. Such applicant or registrant must also file a Form 1–FR–FCM (or, if such applicant or registrant is registered with the Securities and Exchange Commission as a securities broker or dealer, it may file, in accordance with § 1.10(h), a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, in lieu of Form 1–FR–FCM) or such other financial statement designated by the National Futures Association, in the case of an applicant, or by the Commission or the designated self-regulatory organization, if any, in the case of a registrant, as of the close of business for the month during which such event takes place and as of the close of business for each month thereafter until three (3) successive months have elapsed during which the applicant's or registrant's adjusted net capital is at all times equal to or in excess of the minimums set forth in this paragraph (b) which are applicable to such applicant or registrant. Each financial statement required by this paragraph (b) must be filed within 17 business days after the end of the month for which such report is being made: *Provided, however,* That for each month ending between June 30, 1997 and December 31, 1997, inclusive, for which a financial statement is required by this paragraph (b), such financial statement must be filed within 30 calendar days after the end of the month for which such report is being made.

* * * * *

4. Section 1.17 is amended by revising the introductory text of paragraph (d) and by removing paragraph (d)(3) to read as follows:

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

* * * * *

(d) Each applicant or registrant shall have equity capital (inclusive of satisfactory subordination agreements which qualify under this paragraph (d) as equity capital) of not less than 30 percent of the debt-equity total, provided, an applicant or registrant may be exempted from the provisions of this paragraph (d) for a period not to exceed 90 days or for such longer period which the Commission may, upon application of the applicant or registrant, grant in the public interest or for the protection of investors. For the purposes of this paragraph (d):

* * * * *

5. Section 1.18 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.18 Records for and relating to financial reporting and monthly computation by futures commission merchants and introducing brokers.

(a) No person shall be registered as a futures commission merchant or as an introducing broker under the Act unless, commencing on the date his application for such registration is filed, he prepares and keeps current ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each transaction affecting his asset, liability, income, expense and capital accounts, and in which (except as otherwise permitted in writing by the Commission) all his asset, liability and capital accounts are classified into either the account classification subdivisions specified on Form 1–FR–FCM or Form 1–FR–IB, respectively, or, if such person is registered with the Securities and Exchange Commission as a securities broker or dealer and he files (in accordance with § 1.10(h)) a copy of his Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, in lieu of Form 1–FR–FCM or Form 1–FR–IB, the account classification subdivisions specified on such Report, or categories that are in accord with generally accepted accounting principles. Each person so registered shall prepare and keep current such records.

(b) Each applicant or registrant must make and keep as a record in accordance with § 1.31 formal computations of its adjusted net capital and of its minimum financial requirements pursuant to § 1.17 or the requirements of the designated self-regulatory organization to which it is subject as of the close of business each month. An applicant or registrant which is also registered as a securities broker or dealer with the Securities and Exchange Commission may meet the computation requirements of this paragraph (b) by completing the Statement of Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA. Such computations must be completed and made available for inspection by any representative of the National Futures Association, in the case of an applicant, or of the Commission or designated self-regulatory organization, if any, in the case of a registrant, within 17 business days after the date for which the computations are made, commencing the first month end after the date the application for registration is filed: *Provided, however,* That for each month ending between June 30, 1997 and December 31, 1997, inclusive, such computations must be completed and made available for inspection within 30 calendar days after the date for which the computations are made.

* * * * *

6. Section 1.52 is amended by revising paragraph (a) to read as follows:

§ 1.52 Self-regulatory organization adoption and surveillance of minimum financial requirements.

(a) Each self-regulatory organization must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered futures commission merchants. Each self-regulatory organization other than a contract market must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered introducing brokers. Each contract market which elects to have a category of membership for introducing brokers must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered introducing brokers. Each self-regulatory organization shall submit for Commission approval any modification or other amendments to such rules. Such requirements must be the same as, or more stringent than, those contained in §§ 1.10 and 1.17 and the definition of adjusted net capital must be the same as that prescribed in § 1.17(c): *Provided, however,* A designated self-regulatory organization may permit its member registrants which are registered with the Securities and Exchange Commission as securities brokers or dealers to file (in accordance with § 1.10(h)) a copy of their Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, in lieu of Form 1–FR: And, *provided further,* A designated self-regulatory organization may permit its member introducing brokers to file a Form 1–FR–IB in lieu of a Form 1–FR–FCM.

* * * * *

PART 3—REGISTRATION

7. The authority citation for Part 3 is revised to read as follows:

Authority: 5 U.S.C. 552, 552b; 7 U.S.C. 1a, 2, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23.

Subpart A—Registration

8. Section 3.33 is amended by revising paragraph (c)(1) to read as follows:

§ 3.33 Withdrawal from registration.

* * * * *

(c)(1) Where a futures commission merchant or an introducing broker which is not operating pursuant to a guarantee agreement is requesting withdrawal from registration in that capacity and the basis for withdrawal under paragraph (a)(1) of this section is that it has ceased engaging in activities requiring registration, the request for withdrawal must be accompanied by a Form 1–FR–FCM or a Form 1–FR–IB, respectively, which contains the information specified in § 1.10(d)(1) of this chapter as of a date not more than 30 days prior to the date of the withdrawal request: *Provided, however,* That if such registrant is also registered with the Securities and Exchange Commission as a securities broker or dealer, it may file a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA (in accordance with § 1.10(h) of this chapter), in lieu of Form 1–FR–FCM or Form 1–FR–IB. Any financial report submitted pursuant to this paragraph (c)(1) must contain the information specified in § 1.10(d)(1) of this chapter as of a date not more than 30 days prior to the date of the withdrawal request.

* * * * *

PART 145—COMMISSION RECORDS AND INFORMATION

9. The authority citation for Part 145 continues to read as follows:

Authority: Pub. L. 89–554, 80 Stat. 383, Pub. L. 90–23, 81 Stat. 54, Pub. L. 93–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)); Pub. L. 99–570, unless otherwise noted.

§ 145.5 [Amended]

10. Section 145.5 is amended by removing and reserving paragraph (d)(1)(i)(G).

PART 147—OPEN COMMISSION MEETINGS

11. The authority citation for Part 147 continues to read as follows:

Authority: Sec. 3(a), Pub. L. 94–409, 90 Stat. 1241 (5 U.S.C. 552b); Sec. 101(a)(11), Pub. L. 93–463, 88 Stat. 1391 (7 U.S.C. 4a(j) (Supp. V 1975)), unless otherwise noted.

§ 147.3 [Amended]

12. Section 147.3 is amended by removing and reserving paragraph (b)(4)(i)(A)(*7*).

Issued in Washington, D.C. on January 21, 1997 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–2251 Filed 1–30–97; 8:45 am]

BILLING CODE 6351–01–P

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Privacy Act Regulations; Implementation

AGENCY: Tennessee Valley Authority.

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority (TVA) amends its regulations implementing the Privacy Act of 1974 (the Act), 5 U.S.C. 552a. These amendments are needed to modify existing TVA regulations to exempt a system of records known as TVA Police Records (TVA–37) from certain provisions of the Act and corresponding agency regulations.

EFFECTIVE DATE: January 31, 1997.

FOR FURTHER INFORMATION: Wilma H. McCauley, (423) 751–2523.

SUPPLEMENTARY INFORMATION: These amendments allow exemptions authorized by the Act, 5 U.S.C. 552a(j)(2) and (k)(2), for the TVA Police Records—TVA system of records under 5 U.S.C. 552a(k)(2). Under subsections (j)(2) and (k)(2) of the Act, TVA, through rulemaking, may exempt those systems of records maintained by a component of TVA that performs as its principal function any activity pertaining to the enforcement of criminal laws from certain provisions of the Act, if the system of records is used for certain law enforcement purposes.

The TVA Police is a component of TVA that performs as one of its principal functions investigations into violations of criminal law in connection with TVA's programs and operations, pursuant to the Violent Crime Control and Law Enforcement Act of 1994, as amended, the TVA Police Records system of records falls within the scope of subsections (j)(2); i.e., information compiled for the purpose of criminal investigation, reports relating to any stage of the enforcement process, and information compiled for the identification of individual criminals, and (k)(2); i.e., investigatory material compiled for law enforcement purposes, other than material within the scope of (k)(2) above.

The (j)(2) and (k)(2) exemptions for criminal law enforcement records remove restrictions on the manner in which information may be collected and the type of information that may be collected by the TVA Police in the course of a criminal investigation, limit certain notice requirements, and exempt the system of records from civil remedies for violations of the Act. These additional exemptions are necessary primarily to avoid premature disclosure of sensitive information, including, but not limited to, the existence of a criminal investigation, that may compromise or impede the investigation.

A more complete explanation of each exemption follows, as required by the Act.

TVA adds the following to the current exemptions contained in 18 CFR 1301.24.

Exemptions Pursuant to (j)(2) and (k)(2)

TVA has determined that the TVA Police Records should be exempt from the following provisions of the Privacy Act and corresponding agency regulations. These exemptions are necessary and appropriate to maintain the integrity and confidentiality of criminal investigations.

TVA will use the (j)(2) and (k)(2) exemptions for the following reasons: (a) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his/her request. This accounting must state the date, nature and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure could alert the subject of an investigation to the existence and nature of the investigation and reveal investigative or prosecutive interest by other agencies, particularly in a joint-investigation situation. This could seriously impede or compromise the investigation and case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate with the investigators; lead to suppression, alteration, fabrication, or destruction of evidence; and endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families.

(b) 5 U.S.C. 552a(c)(4) requires an agency to inform outside parties of correction of and notation of disputes about information in a system in accordance with subsection (d) of the Privacy Act. Since this system of records is already exempted from the access provisions of subsection (d) of the Privacy Act, this section is not properly applicable.

(c) 5 U.S.C. 552a (d) and (f) require an agency to provide access to records, make corrections and amendments to