

minutes after closing the access to the crew rest compartment. Flight tests must be conducted to show compliance with this requirement.

13. There must be a supplemental oxygen system equivalent to that provided for main deck passengers for each seat and berth in the crew rest compartment. The system must provide:

(a) An aural and visual warning to the occupants of the crew rest compartment to don oxygen masks in the event of decompression; and

(b) A decompression warning that activates before the cabin pressure altitude exceeds 15,000 feet. The warning must sound continuously until a reset pushbutton in the crew rest compartment is depressed.

14. The following requirements apply to a crew rest compartment that is divided into several sections by the installation of curtains or partitions:

(a) To compensate for sleeping occupants, there must be an aural alert that can be heard in each section of the crew rest compartment that accompanies automatic presentation of supplemental oxygen masks. Two supplemental oxygen masks are required in each section whether or not seats or berths are installed in each section. There must also be a means by which the oxygen masks can be manually deployed from the flight deck.

(b) A placard is required adjacent to each curtain that visually divides or separates, for privacy purposes, the overhead crew rest compartment into small sections. The placard must require that the curtain(s) remain open when the private section it creates is unoccupied. The vestibule section adjacent to the stairway is not considered a private area and, therefore, does not require a placard.

(c) For each crew rest section created by the installation of a curtain, the following requirements of these special conditions must be met with the curtain open or closed:

(1) No smoking placard (Special Condition No. 1),

(2) Emergency illumination (Special Condition No. 5),

(3) Emergency alarm system (Special Condition No. 7),

(4) Seat belt fasten signal (Special Condition No. 8), and

(5) The smoke or fire detection system (Special Conditions No.'s 10, 11, and 12).

(d) Overhead crew rest compartments visually divided to the extent that evacuation could be affected must have exit signs that direct occupants to the primary stairway exit. The exit signs must be provided in each separate

section of the crew rest compartment, and must meet the requirements of § 25.812(b)(1)(i).

(e) For sections within an overhead crew rest compartment that are created by the installation of a rigid partition with a door physically separating the sections, the following requirements of these special conditions must be met with the door open or closed:

(1) There must be a secondary evacuation route from each section to the main deck, or alternatively, it must be shown that any door between the sections has been designed to preclude anyone from being trapped inside the compartment.

(2) Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

(3) There may be no more than one door between any seat or berth and the primary stairway exit.

(4) There must be exit signs in each section meeting the requirements of § 25.812(b)(1)(i) that direct occupants to the primary stairway exit.

(f) For each smaller section within the main crew rest compartment created by the installation of a partition with a door, the following requirements of these special conditions must be met with the door open or closed:

(1) No smoking placards (Special Condition No. 1),

(2) Emergency illumination (Special Condition No. 5),

(3) Two-way voice communication (Special Condition No. 6),

(4) Emergency alarm system (Special Condition No. 7),

(5) Seat belt fasten signal (Special Condition No. 8),

(6) Emergency fire fighting and protective equipment (Special Condition No. 9), and

(7) Smoke or fire detection system (Special Conditions No.'s 10, 11, and 12).

15. The requirements of two-way voice communication with the flight deck and provisions for emergency firefighting and protective equipment are not applicable to lavatories or other small areas that are not intended to be occupied for extended periods of time.

16. Where a waste disposal receptacle is fitted, it must be equipped with an automatic fire extinguisher that meets the performance requirements of § 25.854(b).

17. Materials (including finishes or decorative surfaces applied to the materials) must comply with the flammability requirements of § 25.853(a), as amended by Amendment

25–83. Mattresses must comply with the flammability requirements of § 25.853(c), as amended by Amendment 25–83.

Issued in Renton, Washington on March 6, 2001.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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**BILLING CODE 4910–13–U**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 1 and 190

#### Opting Out of Segregation

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rules.

**SUMMARY:** Pursuant to section 111 of the Commodity Futures Modernization Act of 2000, the Commodity Futures Trading Commission (“Commission” or “CFTC”) is proposing to adopt a new rule allowing futures commission merchants to offer certain customers the right to elect not to have funds, that are being carried by the futures commission merchant for purposes of margining, guaranteeing or securing the customers’ trades on or through a registered derivatives transaction execution facility, separately accounted for and segregated. This is sometimes referred to as “opting out” of segregation. The CFTC is also proposing amendments to certain existing rules, which would, among other things, govern the bankruptcy treatment of a customer that opts out of segregation.

**DATES:** Comments on the proposed rule changes must be received by April 12, 2001.

**ADDRESSES:** Comments on the proposed rule should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5528, or by e-mail to [secretary@cftc.gov](mailto:secretary@cftc.gov). Reference should be made to “Commission Rule 1.68.”

#### FOR FURTHER INFORMATION CONTACT:

Lawrence B. Patent, Associate Chief Counsel, or Michael A. Piracci, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

## SUPPLEMENTARY INFORMATION:

## I. Background

The Commodity Futures Modernization Act of 2000 ("CFMA"),<sup>1</sup> enacted on December 21, 2000, adopted section 5a of the Commodity Exchange Act (the "Act")<sup>2</sup> to permit a board of trade, subject to certain conditions, to elect to operate as a registered derivatives transaction execution facility ("DTF") in lieu of seeking designation as a contract market.<sup>3</sup> In order to operate as a registered DTF, the board of trade must meet certain requirements as to the underlying commodities traded<sup>4</sup> and must restrict access to certain eligible traders. In order to be eligible to trade on a registered DTF, a person must either be an eligible contract participant or trade through a futures commission merchant ("FCM") that: (i) is registered with the Commission; (ii) is a member of a futures industry self-regulatory organization (or, if the person is only trading security futures products, a registered national securities association); (iii) is a clearing member of a derivatives clearing organization; and (iv) has net capital of at least \$20 million. Generally, eligible contract participants are institutional traders and individual traders who meet substantial asset requirements, trading for their own accounts.<sup>5</sup> Accordingly, trading on a DTF is limited generally either to (1) institutional or commercial traders, or (2) "retail" customers conducting their trading through a well-capitalized FCM. The newly-adopted section 5a(f) of the Act provides that a registered DTF may authorize an FCM to offer its customers that are eligible contract participants the right not to have their funds that are

carried by the FCM for purposes of trading on the registered DTF, separately accounted for and segregated. Opting out of segregation is not available to a customer who is not also an eligible contract participant.

## II. The Proposed Rule and Amendments to Existing Rules

## A. Proposed Rule 1.68

The Commission is proposing to add new Rule 1.68 to implement the newly-adopted section 5a(f) of the Act. The new rule will provide that an FCM shall not segregate a customer's funds where: (i) the customer is an eligible contract participant; (ii) the funds are deposited with the FCM for purposes of trading on a registered DTF; (iii) the DTF has authorized the FCM to permit eligible contract participants to elect not to have such funds segregated; and (iv) there is a written agreement signed by the customer in which the customer elects to opt out of segregation and acknowledges that it is aware of the consequences of not having its funds segregated. In particular, the agreement must explain that, to the extent a customer has a claim against the estate of a bankrupt FCM in connection with trades for which it has opted out of segregation, the customer would not be entitled to the usual customer priority in bankruptcy.<sup>6</sup> The FCM would be required to keep this agreement on file and open to inspection in accordance with Rule 1.31, the Commission's general recordkeeping rule.<sup>7</sup> This proposed rule is similar to the "opt-out" provisions that have been instituted by the Financial Services Authority ("FSA"), the regulatory agency in the United Kingdom.<sup>8</sup>

Section 4d(2) of the Act generally provides that an FCM must keep funds received from customers separate from the funds of the FCM. The segregation of customer funds serves one of the most important purposes of the Act and the regulatory framework under the Act, the protection of customer funds. The

Commission recognizes that eligible contract participants are sophisticated customers and as such may not require the same level of protection as retail customers. The Commission believes, however, that it is necessary for customers of an FCM, regardless of sophistication, to demonstrate affirmatively that they have elected not to have their funds segregated and that they are aware of the consequences of not having their funds segregated from the funds of the FCM.

An FCM may offer benefits to customers who elect not to have their funds segregated. In making any such offer, however, an FCM may not make any misleading claims or disclosures. For purposes of satisfying the requirement that the customer sign the opt-out agreement, an electronic signature will be acceptable provided it satisfies the elements of Rule 1.4.

To minimize paperwork burdens on FCMs and customers, if a customer opts out of segregation in accordance with proposed Rule 1.68, the FCM could provide the customer a single monthly account statement with a notation of trades for which segregation does not apply. Similarly, the FCM's records must clearly distinguish those positions subject to the opt-out agreement and those that remain subject to segregation. In no event, however, may customer funds related to DTF "opt-out" trades be commingled with customer funds segregated pursuant to Section 4d of the Act and the Commission rules thereunder.

To ease the burden on FCMs, the required agreement with a customer to opt out of segregation may provide that it covers all DTFs that have authorized FCMs to offer such treatment of customer funds. A customer may revoke its election to opt out of segregation by notifying the FCM in writing. To avoid undue disruption of the FCM's business, however, the revocation of the election to opt out of segregation would only be effective for trades entered into after the FCM received such notice from the customer.<sup>9</sup>

The proposed rule would also provide that a customer who chose to opt out of segregation would not be permitted to establish a "third-party custodial account," sometimes also referred to as a "safekeeping account." In Financial and Segregation Interpretation No. 10 ("Interpretation No. 10"), the Commission's Division of Trading and Markets (the "Division") set forth

<sup>1</sup> Commodity Futures Modernization Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763 (to be codified as amended in scattered sections of 7 U.S.C.).

<sup>2</sup> 7 U.S.C. 1 *et seq.* (1994), as amended by Pub. L. 106-554, 114 Stat. 2763.

<sup>3</sup> Commission rules concerning DTFs will be included in a new Part 37, which was published for comment on March 9, 2001.

<sup>4</sup> The requirements for the underlying commodities traded are: (1) The commodity has a nearly inexhaustible deliverable supply; (2) the commodity has a deliverable supply sufficiently large so that the contract is highly unlikely to be susceptible to manipulation; (3) the commodity has no cash market; (4) the contract is a security futures product and the DTF is a registered national securities exchange; (5) the Commission determines that futures trading is unlikely to be susceptible to the threat of manipulation; or (6) the commodity is not an agricultural commodity enumerated in section 1a(4) of the Act and trading is limited to eligible commercial entities trading for their own account. A registered DTF may also trade excluded or exempt commodities that are otherwise excluded pursuant sections 2(c), 2(d), or 2(g) of the Act, or exempt under section 2(h) of the Act.

<sup>5</sup> See Section 1a(12) of the newly-amended Act for the definition of "eligible contract participant."

<sup>6</sup> Normally, in the event of an FCM's bankruptcy, customer claims have priority with respect to customer property over all other claims, except claims "attributable to the administration of customer property." See 11 U.S.C. 766(h); see also 17 CFR Part 190. To the extent that the customer has claims against the bankrupt FCM's estate for trades to which segregation applies, e.g., trades on or subject to the rules of contract markets, or of DTFs for which opting out of segregation is not permitted, the customer would be eligible for the customer priority. Thus, the same customer may have two different kinds of claims against the estate of a bankrupt FCM. See 48 FR 8716 (March 1, 1983).

<sup>7</sup> Commission rules referred to herein are found at 17 CFR Ch. 1 (2000).

<sup>8</sup> See Securities and Futures Authority ("SFA") Rule 4-52. In 2002, SFA Rule 4-52 will be replaced by FSA Conduct Of Business Rules 9.3.8 to 9.3.14.

<sup>9</sup> As with the agreement electing to opt out of segregation, the FCM is required to keep the notice to cancel such an election on file and open to inspection in accordance with Rule 1.31.

guidelines for these types of accounts.<sup>10</sup> In Interpretation No. 10, the Division noted that, if the account is set up in accordance with the guidelines, a third-party custodial account will be deemed to be a separate segregated account. The purpose of the proposed rule is to permit customers the opportunity to opt out of segregation. The Commission believes that it would be inconsistent for a customer to opt out of segregation with respect to DTF trades and at the same time maintain a third-party custodial account, to hold funds related to DTF trades, because such an account is deemed to be a separate segregated account. The Commission is also proposing that a customer who opts out of segregation as to funds held for trading on a DTF not be permitted to obtain a security interest in such funds, so as to gain a priority over other creditors of the FCM.

*B. Amendments to Rules 1.3(gg), 1.3(uu), 1.17(a)(1)(i)(B), and 190.07(b)*

Rule 1.3(gg) defines the term "customer funds." The Commission proposes to amend that rule to make clear that the funds of an opt-out customer would not be deemed "customer funds." The Commission proposes to add Rule 1.3(uu) to define the term "opt-out customer." An opt-out customer is a customer who is an eligible contract participant and elects not to have funds carried by an FCM for purposes of trading on a DTF separately accounted for and segregated, in accordance with proposed Rule 1.68.

Rule 1.17(a)(1)(i) provides the standards for determining the minimum adjusted net capital that must be maintained by each person registered as an FCM. The Commission proposes to amend Rule 1.17(a)(1)(i)(B), which contains the volume of business element of these standards, to make clear that the funds of an opt-out customer are to be included in the computation of the FCM's minimum adjusted net capital requirement. Persons who opt out of segregation are still customers of the FCM and carrying the positions of these customers still poses a risk to the FCM. The Commission believes the amendment to the rule is important to ensure that opt-out customers, by opting out of segregation, do not have an impact on the financial condition of the FCM, thereby increasing the risk to the other customers of the FCM or to the marketplace. The Commission notes that industry self-regulatory organizations have implemented risk-

based capital requirements that take into account both positions subject to segregation and those not subject to segregation. Additionally, the Commission notes that by including the funds of the opt-out customer for purposes of calculating the minimum adjusted net capital, there is no effect on the current minimum capital requirements for registered FCMs.<sup>11</sup>

Rule 1.37(a) currently requires an FCM, for each account that it carries, to keep a permanent record that shows the name, address, and occupation of the person for whom the account is being carried, as well as any person guaranteeing the account or exercising trading control with respect to the account. The Commission proposes to maintain this requirement and to redesignate paragraph "(a)" as paragraph "(a)(1)." The Commission further proposes to add paragraph "(a)(2)," to require FCMs to keep a permanent record showing a customer's election pursuant to proposed Rule 1.68. The FCM would be permitted to indicate such a customer's election on the record it is required to keep under redesignated paragraph (a)(1).

Rule 190.07(b) defines the term "net equity" for purposes of calculating the allowed net equity claim of a customer in the event of an FCM bankruptcy. The Commission proposes to amend the rule to make clear that the net equity of an opt-out customer shall not include funds the customer has chosen not to have segregated and separately accounted for pursuant to proposed Rule 1.68. As noted above, the Commission's intention in this area is that, to the extent that a customer has a claim against the estate of a bankrupt FCM in connection with trades for which it has opted out of segregation, the customer would not be entitled to the normal customer priority in bankruptcy and would be treated as a general creditor.<sup>12</sup>

<sup>11</sup> Several other provisions of Rule 1.17 include calculations for determining the adjusted net capital required of an FCM in order to undertake various actions, such as prepaying subordinated debt. The Commission is proposing to amend these rules to make clear that the funds of an opt-out customer are to be included in calculating the FCM's required adjusted net capital in these situations. See Rules 1.17(e)(1)(ii), 1.17(h)(2)(vi)(C)(2), 1.17(h)(2)(vii)(A)(2), 1.17(h)(2)(vii)(B)(2), 1.17(h)(2)(viii)(A)(2), 1.17(h)(3)(ii)(B), and 1.17(h)(3)(v)(B); see also Rule 1.12(b)(2) (determining the "early warning" level of adjusted net capital).

<sup>12</sup> Of course, to the extent this customer has claims against the bankrupt FCM's estate for trades for which funds have been segregated, it would be eligible for the customer priority.

*C. DTF Rules*

A DTF that wishes to permit FCMs to offer eligible contract participants the right to opt out of segregation must notify the Commission of its intent to institute a rule to that effect at least one day before its implementation, in accordance with Commission Rule 37.7(b). The DTF should also make any such rule publicly available, so that FCMs and eligible contract participants will be aware of the rule.

**III. Related Matters**

*A. Regulatory Flexibility Act*

The Regulatory Flexibility Act ("RFA")<sup>13</sup> requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.<sup>14</sup> The Commission has previously determined that FCMs are not small entities for the purpose of the RFA.<sup>15</sup> Additionally, eligible contract participants, as defined in the newly-amended Act, by the nature of the definition, should not be considered small entities. Further, eligible contract participants have the choice as to whether or not to exercise the right not to have certain funds segregated from the FCM's funds. Accordingly, the Acting Chairman, on behalf of the Commission, certifies pursuant to section 3(a) of the RFA<sup>16</sup> that the proposed rules will not have a significant economic impact on a substantial number of small entities.

*B. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 ("PRA")<sup>17</sup> 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 Commission has submitted a copy of this part to the Office of Management and Budget ("OMB") for its review.

**Collection of Information**

Customer Election to Opt Out of Segregation, OMB Control Number 3038-0024.

The Burden associated with the proposed new rule is estimated to be 600 hours, which will result from new recordkeeping requirements for FCMs

<sup>13</sup> 5 U.S.C. 601 *et seq.*

<sup>14</sup> 47 FR 18618 (April 30, 1982).

<sup>15</sup> 47 FR at 18619.

<sup>16</sup> 5 U.S.C. 605(b).

<sup>17</sup> 44 U.S.C. 3501 *et seq.*

<sup>10</sup> Financial and Segregation Interpretation No. 10, 1 Comm. Fut. L. Rep. (CCH) ¶ 7120 (May 23, 1984).

who offer eligible customers the right to opt out of segregation.

The estimated burden of the proposed new rule was calculated as follows:

*Estimated number of respondents:*

120.

*Reports annually by each respondent:*

250.

*Total annual Responses:* 30,000.

*Estimated average Number of Hours*

*Per Response:* .02.

*Estimated Total Number of Hours of Annual Burden in Fiscal Year:* 600.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235 New Executive Building, Washington, DC 20503, Attention: Desk Officer for the Commodity Futures Trading Commission.

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, usefulness, and clarity of the information to be collected; and

- Minimizing the burden of 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.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. 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, (202) 418-5160.

### C. Comment Period

Section 111 of the CFMA provides that a registered DTF may authorize an

FCM to offer eligible contract participants the right to opt out of segregation with respect to trades on the DTF "not later than 180 days after the date of enactment of the [CFMA], consistent with regulations adopted by the Commission." The time frame provided for in the statute will be reached on or about June 19, 2001. Accordingly, the Commission is providing for only a 30-day comment period on the proposed new rule and rule amendments to implement the statutory requirements.

### D. Cost-Benefit Analysis

Section 119 of the CFMA amended section 15 of the Act to require that the Commission, before promulgating a regulation under the Act or issuing an order, consider the costs and benefits of the Commission's action in light of five criteria.<sup>18</sup> The main consideration relevant to the proposed new rule is the first one set forth in the Act, "protection of market participants and the public." The Commission believes that those market participants eligible to opt out of segregation are sophisticated persons that can properly evaluate for themselves, in light of the required disclosure by, and agreement with, an FCM, whether to opt out of segregation. Additionally, FCMs are also able to evaluate whether offering such an election to their customers who are eligible contract participants is appropriate and consistent with sound risk management practices. The general public and retail customers should also be protected because any eligible contract participant who opts out of segregation would be treated as a general creditor, with respect to those trades for which it has elected to opt out of segregation, in the event of the FCM's bankruptcy. The Commission further notes that opting out of segregation is not required of anyone and would have to be a voluntary election of the registered DTF, FCM, and eligible contract participant. The Commission also notes that the CFMA specifically mandates that the Commission adopt rules to facilitate this election.

### List of Subjects

#### 17 CFR Part 1

Consumer protection, Definitions, Reporting and recordkeeping requirements.

<sup>18</sup> These considerations include: (A) protection of market participants and the public; (B) efficiency, competitiveness, and financial integrity of futures markets; (C) price discovery; (D) sound risk management practices; and (E) other public interest considerations.

#### 17 CFR Part 190

Bankruptcy, Definitions.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1)(A), 4d, 5a(f), and 8a(5) 7 U.S.C. 2(i), 6d, 7a(f), and 12a(5), and 11 U.S.C. 362, 546, 548, 556 and 761-766, the Commission hereby proposes to amend 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 1.3 is amended by adding paragraphs (gg)(3) and (uu) to read as follows:

#### § 1.3 Definitions.

\* \* \* \* \*

(gg) \* \* \*

\* \* \* \* \*

(3) Notwithstanding paragraphs (gg)(1) and (2) of this section, the term customer funds shall exclude money, securities or property received to margin, guarantee or secure the trades or contracts of opt-out customers, and all money accruing to opt-out customers as the result of such trades or contracts, to the extent that such trades or contracts are made on or subject to the rules of any registered derivatives transaction execution facility that has authorized opting out in accordance with § 37.7 of this chapter.

\* \* \* \* \*

(uu) *Opt-out customer*. This term means a customer that is an eligible contract participant, as defined in section 1a(12) of the Act, that has elected, in accordance with § 1.68, not to have funds that are being carried for purposes of trading on or through the facilities of a registered derivatives transaction execution facility, separately accounted for and segregated by the futures commission merchant.

\* \* \* \* \*

3. Section 1.12 is amended by revising paragraph (b)(2) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(2) Six percent of the following amount: The customer funds required to

be segregated pursuant to the Act and the regulations in this part, plus the funds of opt-out customers that, but for the election to opt out pursuant to § 1.68, would be required to be segregated, plus the foreign futures or foreign options secured amount, less the market value of commodity options purchased by such customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid: *Provided, however*, that the deduction for each such customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts;

\* \* \* \* \*

4. Section 1.17 is amended as follows:

- a. By revising paragraph (a)(1)(i)(B), and
- b. By revising paragraphs (e)(1)(ii), (h)(2)(vi)(C)(2), (h)(2)(vii)(A)(2), (h)(2)(vii)(B)(2), (h)(2)(viii)(A)(2), (h)(3)(ii)(B), and (h)(3)(v)(B) by removing the second instance of the word "and" and adding in its place the words ", plus the funds of opt-out customers that, but for the election to opt out pursuant to § 1.68, would be required to be segregated, plus", to read as follows:

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

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(B) Four percent of the following amount: The customer funds required to be segregated pursuant to the Act and the regulations in this part, plus the funds of opt-out customers that, but for the election to opt out pursuant to § 1.68, would be required to be segregated, plus the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid: *Provided, however*, that the deduction for each customer shall be limited to the amount of segregated customer funds in such customer's account(s) and foreign futures and foreign options secured accounts;

\* \* \* \* \*

5. Section 1.37 is amended by redesignating paragraph (a) as paragraph (a)(1) and by adding paragraph (a)(2) to read as follows:

**§ 1.37 Customer's or option customer's name, address, and occupation recorded; record of guarantor or controller of account.**

(a) \* \* \*

(2) Each futures commission merchant who receives a customer's election not to have the customer's funds separately accounted for and segregated, in accordance with § 1.68, shall keep a record in permanent form that indicates such customer's election. The record of such a customer election may be indicated on the record required by paragraph (a)(1) of this section.

\* \* \* \* \*

6. Section 1.68 is added to read as follows:

**§ 1.68 Customer election not to have funds, carried by a futures commission merchant for trading on a registered derivatives transaction execution facility, separately accounted for and segregated.**

(a) A futures commission merchant shall not separately account for and segregate as belonging to commodity or options customers, funds received from a customer if:

(1) The customer is an eligible contract participant as defined in section 1a(12) of the Act;

(2) The customer's funds are being carried by the futures commission merchant for the purpose of trading on or through the facilities of a derivatives transaction execution facility registered under section 5a(c) of the Act;

(3) The registered derivatives transaction execution facility has authorized, in accordance with § 37.7 of this chapter, futures commission merchants to offer eligible contract participants the right to elect not to have funds that are being carried for purposes of trading on or through the facilities of the registered derivatives transaction execution facility, separately accounted for and segregated by the futures commission merchant; and

(4) The futures commission merchant and the customer have entered into a written agreement, signed by the customer, in which the customer acknowledges that:

(i) The customer is an eligible contract participant as defined in section 1a(12) of the Act;

(ii) The customer elects not to have its funds separately accounted for and segregated with respect to agreements, contracts or transactions traded on or subject to the rules of any registered derivatives transaction execution facility that has authorized such treatment in accordance with § 37.7 of this chapter;

(iii) The customer has been informed that, by making this election:

(A) The customer's funds, related to agreements, contracts or transactions on any registered derivatives transaction execution facility that authorizes the opting out of segregation will not be segregated from the funds of the futures commission merchant;

(B) Such funds may be used by the futures commission merchant in the course of the futures commission merchant's business; and

(C) In the event the futures commission merchant files, or has a petition filed against it, for bankruptcy, the customer, as to those funds that the customer has elected not to have separately accounted for and segregated by the futures commission merchant, in accordance with this section, will not be entitled to the priority for customer claims provided for under the Bankruptcy Code and Part 190 of this chapter, and may be treated as a general creditor of the futures commission merchant; and

(iv) The agreement shall remain in effect unless and until the customer revokes the agreement in accordance with paragraph (c) of this section.

(b) In no event may money, securities or property representing those funds that customers have elected not to have separately accounted for and segregated by the futures commission merchant, in accordance with this section, be held or commingled and deposited with customer funds in the same account or accounts required to be separately accounted for and segregated pursuant to section 4d of the Act and rules thereunder.

(c) A customer that has entered into an agreement in accordance with paragraph (a)(4) of this section may abrogate that agreement by so informing the futures commission merchant in writing. The customer's statement, indicating its intent to abrogate the agreement, must be signed by a person with the authority to bind the customer and will be effective with respect to any agreements, contracts or transactions entered into by the customer on or subject to the rules of a derivatives transaction execution facility after the customer's written statement is received by the futures commission merchant.

(d) Each futures commission merchant shall maintain any agreements entered into with customers pursuant to paragraph (a) of this section and any cancellations of such agreements, made pursuant to paragraph (c) of this section, in accordance with § 1.31.

(e) A customer who elects not to have its funds separately accounted for and segregated, in accordance with this section, may not establish a third-party custodial account for those funds, as

described in the Commission's Division of Trading and Markets Financial and Segregation Interpretation No. 10, 1 Comm. Fut. L. Rep. (CCH) ¶ 7120 (May 23, 1984), and may not obtain a security interest in such funds.

## PART 190—BANKRUPTCY RULES

7. The authority citation for Part 190 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7, 7a, 12, 19, 23, and 24, and 11 U.S.C. 362, 546, 548, 556 and 761–766, unless otherwise noted.

8. Section 190.07 is amended by revising paragraph (b) introductory text to read as follows:

### § 190.07 Calculation of allowed net equity.

\* \* \* \* \*

(b) *Net equity.* Net equity means the total claim of a customer against the estate of the debtor based on the commodity contracts held by the debtor for or on behalf of such customer less any indebtedness of the customer to the debtor. Net equity for any opt-out customer shall exclude any claim based on any commodity contracts traded on or subject to the rules of any registered derivatives transaction execution facility that has authorized opting out in accordance with § 37.7 of this chapter. Net equity shall be calculated as follows:

\* \* \* \* \*

Issued in Washington, DC on March 8, 2001, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 01–6181 Filed 3–12–01; 8:45 am]

**BILLING CODE 6351–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG–105235–99]

RIN 1545–AX28

### Exclusion of Gain From Sale or Exchange of a Principal Residence; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains corrections to a notice of proposed rulemaking and notice of public hearing

that was published in the **Federal Register** on Tuesday, October 10, 2000 (65 FR 60136) relating to the exclusion of gain from the sale or exchange of taxpayer's principal residence.

**FOR FURTHER INFORMATION CONTACT:** Sara P. Shepherd at (202) 622–4910 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The notice of proposed rulemaking and notice of public hearing that is the subject of these corrections is under section 121 of the Internal Revenue Code.

##### Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing contains errors that may prove to be misleading and are in need of clarification.

##### Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking and notice of public hearing (REG–105235–99), that was the subject of FR Doc. 00–25482, is corrected as follows:

##### § 1.121–1 [Corrected]

1. On page 60139, column 1, § 1.121–1, paragraph (f), *Example 9*, third line from the bottom of the paragraph, the language “\$5,000 of which adjusted net capital gain). J” is corrected to read “\$5,000 of which is adjusted net capital gain). J”.

##### § 1.121–2 [Corrected]

2. On page 60139, column 2, § 1.121–2, paragraph (b)(3), *Example 1*, line three, the language “sale is \$256,000. A and B meet the” is corrected to read “sale is \$256,000. H and W meet the”.

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Office of Special Counsel (Modernization and Strategic Planning).*

[FR Doc. 01–5959 Filed 3–12–01; 8:45 am]

**BILLING CODE 4830–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[WA–72–7147b; FRL–6938–4]

### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Washington

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve the Kent, Seattle, and Tacoma, Washington PM–10 area maintenance plan and redesignation request from nonattainment to attainment as revisions to the Washington State Implementation Plan (SIP). PM–10 air pollution is suspended particulate matter with a diameter less than or equal to a nominal ten micrometers.

In the Final Rules section of this **Federal Register**, the EPA is approving the Washington SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated.

If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Written comments must be received by April 12, 2001.

**ADDRESSES:** Written comments should be addressed to Debra Suzuki, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below.

Copies of the State's request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Washington Department of Ecology, 300 Desmond Drive, PO Box 47600, Olympia, Washington 98504–7600.

#### FOR FURTHER INFORMATION CONTACT:

Steven K. Body, EPA, Office of Air Quality (OAQ–107), Seattle, Washington, (206) 553–0782.

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: December 11, 2000.

**Ronald A. Kreizenbeck,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 01–6083 Filed 3–12–01; 8:45 am]

**BILLING CODE 6560–50–P**