(B) If not previously identified, the identity of each eligible customer account to which fills will be allocated.

(C) Foreign advisers must also provide a written certification from a foreign authority stating that the foreign adviser's activities are subject to regulation by that foreign authority and the foreign authority will provide, upon request of the Commission or Department of Justice, information that relates to the foreign adviser's compliance with the requirements of this paragraph.

(v) *Allocation.* Orders eligible for post-execution allocation must be allocated in accordance with the following:

(A) Allocations must be made only to the accounts of eligible customers.

(B) Allocations must be made as soon as practicable after the entire transaction is executed, but no later than the end of the day the order is executed.

(C) Allocations must be fair and equitable. No account or group of accounts may receive consistently favorable or unfavorable treatment.

(D) The allocation methodology must be sufficiently objective and specific so that the appropriate allocation for a given trade can be verified in an independent audit.

(E) The allocation methodology must be consistently applied.

(vi) *Recordkeeping.* The following recordkeeping requirements apply to orders eligible for post-execution allocation:

(A) Prior to order placement, each account manager must create and timestamp an order origination document reflecting the terms of the order and expected allocation thereof. Any subsequent determination to alter any terms or allocation of the order should likewise be documented.

(B) Each order must be identified by group identifier or other code on the office and/or floor order tickets at the time of placement. The group identifier or other code on each order ticket must relate back to the specific order origination document required by paragraph (a–1)(5)(vi)(A) of this section.

(C) Each transaction must be identified as part of an order eligible for post-execution allocation on contract market trade registers and other computerized trade practice surveillance records.

(D) Each account manager must make available, upon request of any representative of the Commission or the United States Department of Justice, the following records:

(*1*) The disclosure documents required pursuant to paragraph (a–1)(5)(iii) of this section; and

(*2*) Records reflecting futures and option transactions and other transactions and any other records, including the order origination document, that would identify the management strategy or the allocation methodology or would relate to, or reflect upon, the fairness of the allocations.

(E) Each account manager must make available for review, upon request of an eligible customer, summary or composite data sufficient for that customer to compare its results with those of other relevant customers. These summary data may be prepared so as not to disclose the identity of individual account holders.

(vii) *Self regulatory organization rule enforcement and audit procedures.* As part of its rule enforcement program, each contract market that adopts rules that allow the placement of orders eligible for post-execution allocation must adopt audit procedures to determine compliance with the recordkeeping requirements identified in paragraph (a–1)(5)(vi) (B) and (C) of this section. Each contract market, or the designated self-regulatory organization of a member firm, must adopt audit procedures to determine compliance with the certification and allocation requirements identified in paragraphs (a–1)(5)(iv) and (a–1)(5)(v) (A) and (B) of this section.

* * * * *

Issued in Washington, DC on August 21, 1998 by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 98–22933 Filed 8–26–98; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Maintenance of Minimum Financial Requirements by Futures Commission Merchants and Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: Rule 1.12 of the Commodity Futures Trading Commission (Commission or CFTC) [1] sets forth the early warning reporting requirements for futures commission merchants (FCMs) and introducing brokers (IBs). These requirements are designed to afford the CFTC and industry self-regulatory organizations (SROs) sufficient advance notice of a firm's financial or operational problems to take any protective or remedial action that may be needed to assure the safety of customer funds and the integrity of the marketplace.

The Commission is adopting as proposed an amendment to Rule 1.12, applicable to FCMs only, to require immediate notification by an FCM to the CFTC and its designated self-regulatory organization (DSRO) if an FCM knows or should know that it is in an undersegregated or undersecured condition, i.e., that the FCM has insufficient funds in accounts segregated for the benefit of customers trading on U.S. contract markets or has insufficient funds set aside for customers trading on non-U.S. markets to meet the FCM's obligations to its customers. The term ''funds'' in this context includes accrued amounts due to or from the FCM's clearing organizations and/or carrying brokers in connection with customer-related activities, typically the daily or intraday variation settlement.

The Commission is also adopting amendments to Rule 1.12, as proposed, to require immediate notification of certain events pertaining to undercapitalization or failure to satisfy margin calls, where notice has been required within 24 hours. In addition, the Commission has determined to codify a previous staff interpretation that permits notices required by Rule 1.12 to be filed by facsimile in lieu of telegraphic means and to require immediate telephonic notice as well.

EFFECTIVE DATE: September 28, 1998.

FOR FURTHER INFORMATION CONTACT: Paul H. Bjarnason, Jr., Deputy Director and Chief Accountant, or Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Introduction

On January 6, 1998, the Commission proposed amendments to the early warning requirements set forth in Rule 1.12.[2] These proposals included: (1) a new requirement for an FCM to notify the CFTC and its DSRO immediately (by telephone call to be followed immediately by telegraphic or facsimile notice) when it knows or should know that it is in an undersegregated or undersecured condition; (2) requiring immediate telephonic notice, rather

[1] Commission rules are found at 17 CFR Ch. I (1998).

[2] 63 FR 2188 (Jan. 14, 1998).

than notice within 24 hours, when an FCM or IB is undercapitalized or when an account must be liquidated, transferred or allowed to trade for liquidation only; and (3) codifying a previous staff interpretation that permits written notices to be filed by facsimile in lieu of telegraphic means.[3]

The 60-day comment period expired on March 16, 1998. The Commission received eight comment letters. Three FCMs, GNI Incorporated (GNI), FIMAT USA Inc. (FIMAT) and Lind-Waldock & Company (LWC), each submitted a comment letter. One comment letter was submitted on behalf of six exchanges (Chicago Board of Trade, Chicago Mercantile Exchange (CME), Kansas City Board of Trade, Minneapolis Grain Exchange, New York Cotton Exchange and New York Mercantile Exchange, collectively referred to as the Exchanges). Another exchange, the Coffee, Sugar & Cocoa Exchange (CSCE), submitted its own comment letter. The other commenters were the Association of the Bar of the City of New York's Committee on Futures Regulation (NYC Bar), National Futures Association (NFA) and the Futures Industry Association (FIA).[4] The commenters expressed concern about the ''should know'' portion of the reporting standard in the proposed undersegregation notice rule. Some of the commenters suggested alternatives to the proposals. These comments and alternatives are discussed more fully below.

The Commission has considered carefully the comments received. Based upon these comments, discussions between Commission staff and industry representatives and the Commission's reconsideration of this subject, the Commission has determined to adopt a new Rule 1.12(h) as proposed so that an FCM will be required to notify immediately the CFTC and its DSRO of an undersegregated or undersecured condition if it knows or should know the condition exists. The Commission has also provided in the preamble of this release, in response to suggestions from FIA and NFA, an example of the circumstances that would trigger a requirement to report under the new standard. The other rule amendments have been adopted essentially as proposed.

II. Rule Amendments

A. Undersegregation Notice

1. Proposal

FCMs occasionally have become undersegregated as a result of market movements which cause deficits in the accounts they carry on behalf of their customers. Generally, the undersegregated condition is discovered as a result of the segregation calculation, which under Commission rules is required to be completed by noon on the business day following the day of the market movements. Most FCMs are able to avoid any undersegregated condition which might have occurred on the same business day for which the segregation calculation is made, using proprietary funds or through collection of deficits by wire transfer arrangements made with customers. However, this is not always the case. During the market downturn on October 27, 1997, the Commission was made aware that a few FCMs experienced undersegregation to a degree that they were unable to make up the shortfall from their own internal proprietary funds. Infusions of external capital were required in those cases to correct the undersegregated conditions. The Commission is also aware that, in at least one case, an FCM was aware that it was undersegregated as of the close of business on October 27, due to losses in the accounts of a single customer. Further, this FCM was aware on October 27 that it was likely this customer would default in its obligations to the FCM and that, as a result, the FCM would be undersegregated. Further, the FCM also knew that it did not have sufficient proprietary funds within the firm to correct the undersegregated condition. As explained further below, the Commission was notified on or about the close of business October 28—at least one day after the FCM was well aware of the situation.

An evaluation of the Commission's early warning notification rules indicated that these rules, which require notice to the Commission upon, among other events, an FCM falling below the adjusted net capital early warning level, which is 150 percent of the minimum required, may not result in notice to the commission until as much as a day or a day and a half after the occurrence of a major market event that causes an undersegregated condition. In particular, on October 27, 1997, some firms knew that they had a major problem by noon of that day, but did not provide notice of these problems to the Commission until on or about the close of business on October 28.

The Commission, therefore, proposed a new Rule 1.12(h)[5] that would require an FCM to notify the Commission and its DSRO immediately after it knows or should know that funds segregated for customers trading on U.S. markets or set aside for customers trading on non-U.S. markets are less than the amount required to be segregated or set aside by the Commodity Exchange Act (Act) or Commission rules.[6] In this context, the term ''funds'' includes funds on deposit and funds due to or from the FCM's clearing organizations or carrying brokers. The Commission's proposal would require an immediate telephone call by an FCM, to be followed immediately by telegraphic or facsimile notice. The notification to the Commission would be directed to the Division of Trading and Markets, to the attention of the Director and the Chief Accountant, and notice to the DSRO was to be directed to the person or unit provided for under the DSRO's rules. For example, the notice required by CME Rule 971 must be sent to CME's Audit Department.[7]

2. Comments on Proposed Reporting Standard

Most of the commenters objected to the ''should know'' standard in proposed new Rule 1.12(h). GNI, Cargill and LWC criticized this language as being too vague and granting the Commission too much discretion. NYC Bar and CSCE claimed that a ''should know'' standard would lead to overreporting by firms fearful of an enforcement action. Overreporting could create or exacerbate, rather than prevent or ameliorate, a market crisis, causing rumors to spread of problems at reporting firms, according to the NYC Bar and GNI. FIA expressed concern that this could cause the Commission to take precipitous action, such as ordering the transfer of accounts.

NYC Bar also stated that ''the 'should know' standard has not been the subject of litigation or addressed by any staff interpretations.'' The Commission notes that the ''should know'' standard has

[3] The CFTC's Division of Trading and Markets has stated that any notice required to be transmitted to the CFTC under Rule 1.12 by telegraphic notice may be transmitted by facsimile machine. *See* CFTC's Advisory No. 90–2, [1987–1990] Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,599 (Feb. 6, 1990). The CFTC proposes to codify this Advisory throughout Rule 1.12 to make clear that any written notice can be provided either through telegraphic means or via facsimile transmission.

[4] In addition, the comment file contains a memorandum from Commissioner Holum's office concerning a meeting on February 10, 1998, with staff of Cargill Investor Services, Inc. and Cargill Grain Division (collectively, Cargill) during which the rule proposals, among other things, were discussed.

[5] The Commission proposed to redesignate current paragraph (h) of Rule 1.12 as paragraph (i) and to include the new rule in a new paragraph (h).

[6] Background on the segregation and set aside requirements is set forth at 63 FR 2188, 2189.

[7] The CME has a rule requiring that a FCM for which it acts as the DSRO provide written notice to CME within 24 hours after the FCM becomes aware of its failure to maintain sufficient funds in segregation or set aside in separate accounts. Rules of the Chicago Mercantile Exchange, Rule 971 *Segregation and Secured Requirements* (1997).

been part of the standard for reporting undercapitalization in Rule 1.12(a) since it was adopted 20 years ago.[8] The Commission was intending to conform the reporting requirements for undersegregation and undercapitalization, a concept that FIMAT deemed sensible in its comment letter (although, as discussed below, FIMAT objected to the timing element). The Commission further notes that Rule 1.12(a) has been the subject of litigation.[9]

Some commenters suggested alternatives. FIA stated that it could support reporting of undersegregation subject to three conditions, which should be set forth in the rule itself or in the preamble of the **Federal Register** notice announcing adoption of the rule: (1) there is a significant undermargined account; (2) the customer makes clear that it is unable or unwilling to meet the margin call; and (3) the FCM is aware that it will be unable to transfer enough funds from its own accounts into segregation in a timely manner to cover the shortfall. NFA stated that, in extraordinary markets, an FCM may know earlier than the formal computation deadline of noon the following business day that it is undersegregated and suggested that the Commission clarify that this is the exception rather than the norm.

In an effort to respond to the commenters, the Commission's staff explored the use of language other than ''knows or should know'' for the undersegregation notice requirement on an informal basis with representatives of entities that submitted comment letters. Following these discussions and Commission reconsideration of the issue, the Commission has determined to adopt as the standard for reporting an undersegregated or undersecured condition that an FCM ''knows or should know'' either condition exists, as the Commission proposed. Of course, this standard would be met if the daily calculations of segregation and secured amount requirements pursuant to Rules 1.32 and 30.7(f) reveal deficiencies. However, the requirement to report under new Rule 1.12(h) could also arise even before the required daily calculations of segregation and secured amount must be made. The Commission notes, in response to FIA's and NFA's suggestion referred to above, the one example of when the Commission would conclude that an FCM knows or should know that the new reporting requirement is triggered is the following circumstance: (1) there is a significant undermargined account; (2) the customer makes clear that it is unable or unwilling to meet the margin call; and (3) the FCM is aware that it will be unable to transfer enough funds from its own accounts into segregation or separate set-aside accounts to cover the shortfall.

That part of the standard requiring an FCM to report when it ''should know'' of a problem may be defined as the point at which a party, in the exercise of reasonable diligence, should become aware of an event. This is an objective standard that has been applied by courts on numerous occasions.[10] As noted above, the standard ''knows or should know'' has been used in Commission Rule 1.12(a) for almost 20 years, and this language is used in other federal regulations.[11] Because of the severe financial consequences that could arise from an FCM's failure to comply with segregation and secured amount requirements, and to achieve consistency between the treatment of undercapitalization and undersegregation conditions, the Commission believes that it is appropriate to adopt the ''knows or should know'' standard for new Rule 1.12(h).

By this rule change, the Commission requires reporting of serious problems, such as occurred on October 27, 1997, as soon as they become apparent to the FCM. In addition, the Commission wishes to make clear that an FCM cannot avoid the reporting requirement by failing to perform or by delaying the required segregation and secured amount calculations pursuant to Rules 1.32 and 30.7(f). Failure to make the required calculations, which are rule violations in and of themselves, cannot be used as an excuse for failing to report as required by new Rule 1.12(h).

3. Comments on When to Report

The Commission proposed that an FCM be required to report an undersegregated or undersecured condition immediately by telephone, which is to be confirmed in writing immediately by telegraphic or facsimile notice. The Exchanges and FIMAT stated that, during major market moves, the first priority of an FCM should be to monitor accounts, to collect required deposits and to ensure that settlement variation requirements can be met. In their view, it is less important to perform immediately a ministerial calculation to determine whether a precise violation of segregation requirements has occurred than to address immediately all severe problems. These commenters, as well as GNI, NYC Bar and FIA, also noted that, given the nature of today's financial markets, with round-the-clock, round-the-globe trading and increased give-up business, it takes time for an FCM to gather and to review the necessary information concerning an FCM's segregation and secured amount requirements; moment-to-moment calculations are not possible. Two commenters (GNI and FIMAT) questioned whether Commission staff would be available at all times to receive calls if immediate telephonic notice is required.

Certain commenters also suggested alternatives on this aspect of the proposals. FIMAT noted that, pursuant to CME Rule 971(C), it is already required to report undersegregation to the CME within 24 hours. FIMAT stated that it would not object to a similar time frame in a Commission rule; earlier reporting could be encouraged, but mandating immediate reporting is too severe in FIMAT's view. NYC Bar suggested that the Commission amend Rule 1.32 to require earlier completion of the daily segregation record (now required by noon on the following business day) and immediate reporting of undersegregation as of the earlier time.

The Commission considered the time for reporting in connection with the rule proposal and determined that immediate reporting would be the appropriate standard. The Commission recognizes, however, that time may be needed for consultation by FCM staff with senior management, and it did not intend to foreclose that activity. The Commission also did not intend to require FCMs to make additional segregation calculations on a routine basis, but only to do so if a problem arises that could trigger the reporting requirement under new Rule 1.12(h). It is the Commission's intent that the ''knows or should know'' standard be implemented by FCMs using existing sources of information and computations. Nor does the Commission wish to accelerate the requirement for completion of the daily segregation record, as suggested by the NYC Bar, since the Commission would have to propose such a rule change and allow

[8] 43 FR 39956, 39969 (Sept. 8, 1978).

[9] *See, e.g., In the Matter of First Commercial Financial Group, Inc., et al.*, CFTC Docket No. 95–10, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,180 (Initial Decision Oct. 27, 1997); *In the Matter of Eagan & Company, Inc., et al.* CFTC Docket No. 92–20, [1990–1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,350 (Initial Decision July 31, 1992).

[10] *See, e.g., Anixter* v. *Home-State Production Company*, 947 F. 2d 897, 899 & n.5 (10th Cir. 1991); *Maloley* v. *R.J. O'Brien & Associates, Inc.*, 819 F.2d 1435, 1442–1444 (8th Cir. 1987).

[11] *See, e.g.*, 17 CFR 240.14e–3 (1998); 29 CFR 1604.11 (1997).

further comment thereon and the Commission does not believe at this time that such a rule change is needed. The Commission is requiring that, when an FCM knows or should know that it is undersegregated or undersecured, it must report that immediately. As to the availability of Commission staff for immediate telephonic notification under new Rule 1.12(h), the Commission does not believe that this will be a problem given modern telecommunications facilities.

After reviewing other provisions of the early warning requirements, the Commission proposed that notices of events that had been required within 24 hours (namely, when an FCM or IB is undercapitalized or when an account must be liquidated, transferred or allowed to trade for liquidation only) be made immediately. Such notifications would be required by telephone immediately, to be confirmed in writing by telegraph or facsimile. *See* Rule 1.12(a)(1), (f)(1), and (f)(2). Certain other provisions of Rule 1.12 already require immediate notifications. *See* paragraphs (e), (f)(3), (f)(4) and (f)(5) of Rule 1.12. The Commission also proposed that these notifications be made by telephone as well as by telegraph or facsimile. The Commission received no comment on these proposals and is adopting them as proposed.[12]

4. Comments on Where to Report

The Commission proposed new Rule 1.12(h) to require an FCM to report an undersegregated or undersecured condition both to its DSRO and to the Commission, which is consistent with the other provisions of Rule 1.12. The Exchanges, FIA, GNI and LWC commented that all early warning notices, including those unaffected by the recent proposals, should be filed only with a firm's DSRO, which would in turn be responsible for informing the CFTC and other SROs. This would eliminate the requirement for a firm to report directly to the Commission. Taking a different viewpoint, CSCE complained that DSROs fail to share early warning notice information in a timely manner with other exchanges and clearing organizations where the FCM that filed an early warning notice is carrying large positions.

The Commission did not consider this to be an issue in drafting the proposals, and the proposal as to where to report an undersegregated or undersecured condition was consistent with the other provisions of Rule 1.12. Since time is of the essence in situations addressed by Rule 1.12, and in light of the Commission's review of all of the comments on this point, the Commission has determined to adopt as proposed the requirement for direct notice by firms to the Commission under new Rule 1.12(h). The Commission also wishes to note, however, that it encourages FCMs to communicate with their DSROs on an ongoing basis and believes that DSROs can perform an important role in determining when it is appropriate for early warning notices to be filed. In any event, at the point when an FCM knows or should know that it is in an undersegregated or undersecured condition, it must report that condition immediately to its DSRO and the Commission.

The Exchanges requested that paragraphs (f)(3)–(f)(5) of Rule 1.12 be deleted as ineffectual. These provisions require immediate reporting whenever (1) an FCM issues a margin call in excess of its adjusted net capital,[13] (2) a margin call is not met by the close of business on the day following its issuance, or (3) an FCM's excess adjusted net capital is less than six percent of maintenance margin required on positions carried for noncustomers other than another FCM or a securities broker-dealer.

The Commission's only proposals with respect to paragraphs (f)(3)–(f)(5) of Rule 1.12, which were adopted in conjunction with and were derived from the proposals for the Commission's risk assessment rules, Rules 1.14 and 1.15, concerned telephonic and facsimile notice as described above. The Commission believes that these provisions should be retained, but that, if the Commission pursues further rulemaking concerning risk assessment, it may be appropriate at that time to reconsider Rule 1.12(f)(3)–(f)(5).

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611 (1994), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments discussed herein would affect primarily FCMs. The amendment of one provision, § 1.12(f)(1), would affect clearing organizations, and the amendment of another provision, § 1.12(a)(1), would affect IBs. The Commission has previously determined that, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entity.[14] Contract markets and their clearing organizations have also been excluded from the definition of small entity.[15]

The amendment to § 1.12(a)(1) concerning notice of undercapitalization affects the minority of IBs that rely upon their own capital to meet adjusted net capital rules, ''independent'' IBs, as well as FCMs. The Commission has determined to require that this notice be provided immediately rather than within 24 hours as previously required. The notification requirement will remain essentially the same, but the time within which to report has been shortened. The Commission believes that this rule amendment is necessary for the Commission and DSROs to be able to carry out their oversight and monitoring functions concerning the financial condition of futures industry intermediaries and to protect the customers of those firms and the markets. Therefore, any slight increase in the burden on an independent IB caused by the amendment to Rule 1.12(a)(1) is necessary for the Commission to fulfill its regulatory obligations.[16]

Therefore, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein 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''), 44 U.S.C. 3501 *et seq.* (Supp. I 1995), imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Commission anticipates that fewer than ten FCMs per year will file reports under the new rule, and thus the new rule will not constitute a collection of information under the PRA.[17] The group of rules (3038–0024) of which this is a part has the following burden:
Average Burden Hours Per Response:
128

[12] The Commission is also adopting as proposed a correction to the cross-reference in § 1.12(g)(2) concerning consolidation that now refers to ''§ 1.10(f)'' to read ''1.17(f)''.

[13] FIMAT commented that the existence of Rule 1.12(f)(3), which requires immediate reporting when an FCM issues a margin call in excess of its adjusted net capital, is a reason not to require immediate reporting of undersegregation.

[14] 47 FR 18618–18621 (April 30, 1992).

[15] *Id.*

[16] The Commission evaluates within the context of a particular rule proposal whether all or some IBs should be considered small entities and, if so, analyzes the impact on IBs of the proposal. 48 FR 35248, 35276 (Aug. 3, 1983).

[17] 44 U.S.C. 3502(3) (Supp. I 1995).

Number of Respondents: 1366
Frequency of Response: On ocassion

Copies of the OMB approved information collection package associated with this rule may be obtained from Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, D.C. 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 1

Commodity futures, Minimum financial and related reporting requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, Sections 4f, 4g and 8a(5) thereof, 7 U.S.C. 6f, 6g and 12a(5), the Commission hereby amends Part 1 of 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 1.12 is amended by revising paragraph (a)(1), by revising the first sentence of paragraph (b)(4), by adding the phrase ''or facsimile'' after the word ''telegraphic'' in paragraphs (c) and (d), by revising paragraph (e), by adding the phrase ''telephonic, confirmed in writing by'' before the word ''telegraphic,'' by adding the phrase ''or facsimile,'' after the word ''telegraphic'' and by revising the phrase at the end which reads ''within 24 hours'' to read ''immediately'' in paragraphs (f)(1) and (f)(2), by adding the phrase ''telephonic, confirmed in writing by'' before the word ''telegraphic'' and by adding the phrase ''or facsimile,'' after the word ''telegraphic'' in paragraph (f)(3), by adding the phrase ''by telephone, confirmed in writing immediately by telegraphic or facsimile notice,'' after the word ''immediately'' in paragraphs (f)(4) and (f)(5), by revising the phrase in paragraph (g)(2) which reads ''§ 1.10(f)'' to read ''§ 1.17(f)'', by redesignating paragraphs (h)(1) and (h)(2) as paragraphs (i)(1) and (i)(2), respectively, by revising the last sentence of paragraph (i)(2), and by adding a new paragraph (h). The additions and revisions follow:

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

(a) * * *

(1) Give telephonic notice, to be confirmed in writing by telegraphic or facsimile notice, as set forth in paragraph (i) of this section that the applicant's or registrant's adjusted net capital is less than required by § 1.17 or by other capital rule, identifying the applicable capital rule. The notice must be given immediately after the applicant or registrant knows or should know that its adjusted net capital is less than required by any of the aforesaid rules to which the applicant or registrant is subject; and

* * * * *

(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 (i) of this section within five (5) business days of such event. * * *

* * * * *

(e) Whenever any self-regulatory organization learns that a member registrant has failed to file a notice or written report as required by § 1.12, that self-regulatory organization must immediately report this failure by telephone, confirmed in writing immediately by telegraphic or facsimile notice, as provided in paragraph (i) of this section.

* * * * *

(h) Whenever a person registered as a futures commission merchant knows or should know that the total amount of its funds on deposit in segregated accounts on behalf of customers, or that the total amount set aside on behalf of customers trading on non-United States markets, is less than the total amount of such funds required by the Act and the Commission's rules to be on deposit in segregated or secured amount accounts on behalf of such customers, the registrant must report immediately by telephone, confirmed in writing immediately by telegraphic or facsimile notice, such deficiency to the registrant's designated self-regulatory organization and the principal office of the Commission in Washington, D.C., to the attention of the Director and the Chief Accountant of the Division of Trading and Markets.

(i) * * *

(2) * * * Any notice or report filed with the National Futures Association pursuant to this paragraph shall be deemed for all purposes to be filed with, and to be the official record of, the Commission.

Issued in Washington, D.C. on August 24, 1998 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–23021 Filed 8–26–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 98F–0057]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of calcium bis[monoethyl(3,5-di-*tert*-butyl-4-hydroxybenzyl)phosphonate] as a stabilizer for polyethylene phthalate polymers intended for use in contact with food. This action is in response to a petition filed by Ciba Specialty Chemicals Corp.

DATES: The regulation is effective August 27, 1998; written objections and requests for a hearing by September 28, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 6, 1998 (63 FR 6193), FDA announced that a food additive petition (FAP 8B4578) had been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., Tarrytown, NY 10591–9005. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of calcium bis[monoethyl(3,5-di-*tert*-butyl-4-hydroxybenzyl)phosphonate] as a stabilizer for polyethylene phthalate polymers complying with 21 CFR 177.1630, intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material.