SUPPLEMENTARY INFORMATION: On December 21, 1979, SBA published in the Federal Register a notice of proposed rulemaking (44 FR 75655) to amend Part 122, relating to the servicing of business loans by lenders. A typographical error appeared in the notice listing the amended section as "122.10" but the introductory language accurately referred to "122.20." No comments were received. However, SBA believes one clarifying change in the regulation may be appropriate. Thus, after the word "completes" an explanatory parenthesis defines completion.

Pursuant to the authority contained in Section 5(b)(6) of the Small Business Act, 15 U.S.C. 634, § 122.20(d) of Part 122 is amended to read as follows:

§ 122.20 Loan administration.

* * * * *

(d) When SBA completes (*i.e.* perfects paperwork necessary to process disbursement) the purchase of its share of a guaranteed loan the financial institution shall assign the note and the other loan instruments to SBA and loan servicing shall become the responsibility of SBA; *Provided, however,* That with SBA's written consent the financial institution may continue to service the loan and be the holder of the note and the other loan instruments until SBA makes a written request for the transfer of loan servicing to SBA; the financial institution shall thereupon assign and deliver to SBA all loan instruments immediately after the receipt of such a transfer request from SBA.

(Catalog of Federal Domestic Assistance Program No. 59.012, Small Business Loans)

Dated: November 25, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-37826 Filed 12-4-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 376 and 379

Export Licensing Requirements for Computer Software; Interim Rule

AGENCY: Office of Export Administration, International Trade Administration, Department of Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Export Administration Act of 1979 ("the Act") provides for the restriction of exports of goods and "technology" (including computer software) when necessary to support U.S. national security and foreign policy objectives. This rule clarifies the Department's position on the export of computer software by amending the Export Administration Regulations to require the submission of specific technical information in support of applications for licenses to export computer software either coupled with the export of digital computer hardware or proposed for export independent of hardware. Further, applications for the export of digital computer hardware to Country Groups P, Q, W, and Y must now describe the software that will be used with the hardware.

DATES: This rule is effective December 5, 1980. Comments must be received by February 3, 1981.

ADDRESS: Written comments (six copies when possible) should be sent to: Richard J. Isadore, Acting Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, Room 1617M, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Archie Andrews, Director Exporters' Service Staff, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377-5247 or 377-4811).

SUPPLEMENTARY INFORMATION:

Regulatory Revisions

Section 376.10(a) of the Export Administration Regulations outlines the requirements for filing of export license applications covering the export of digital electronic computers and related equipment to destinations in Country Groups P, Q, W, and Y. This announcement revises the provisions of § 376.10(a) by establishing requirements for the furnishing of specific technical information describing computer software proposed for export to destinations in Country Groups P, Q, W, and Y and subject to validated licensing requirements as technical data under the provisions of Part 379 of the Export Administration Regulations. Further, exporters are now required to describe software that will be used with digital computer hardware intended for export to Country Groups P, Q, W, and Y. The information to be furnished is for use by Office of Export Administration technicians in performing licensing assessments. This revision relates to national security controls imposed under the authority in Section 5 of the Export Administration Act of 1979.

Rulemaking Requirements

Section 13(a) of the Export Administration Act of 1979 (Pub. L. 96-72, to be codified at 50 U.S.C. App. 2401 et seq.) ("the Act") exempts regulations promulgated under the Act from the public participation in rulemaking procedures of the Administrative Procedure Act. Because they relate to a foreign affairs function of the United States, it has been determined that these regulations are not subject to Department of Commerce Administrative Order 218-7 (44 FR 2082, January 9, 1979) and International Trade Administration Administrative Instruction 1-6 (44 FR 2093, January 9, 1979) which implement Executive Order 12044 (43 FR 12661, March 23, 1978), "Improving Government Regulations."

However, because of the importance of the issues raised by these regulations and the intent of Congress set forth in section 13(b) of the Act, these regulations are issued in interim form and comments will be considered in developing final regulations.

The period for submission of comments will close February 3, 1981. All comments received before the close of the comment period will be considered by the Department in the development of final regulations. While comments received after the close of the comment period will be considered if possible, their consideration cannot be assured. Public comments which are accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason, will not be accepted. Such comments and materials will be returned to the submitter and will not be considered in the development of the final regulations.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received they must be followed by written memoranda which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 3102, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the *Code of Federal Regulations*. Information about the inspection and copying of records at the facility may be obtained from Mrs. Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377-3031.

Accordingly, the Export Administration Regulations (15 CFR 376.10, 379.4(b)(1) and 379.5) are revised as follows:

PART 376—SPECIAL COMMODITY POLICIES AND PROVISIONS

a. A new § 376.10(a)(1)(vii) is added as follows:

§ 376.10 Electronic computers and related equipment.

* * * * *

(a) * * *

(1) * * *

(vii) A description of all computer softwear (whether under validated or general license) that will be exported for use with the equipment including:

(*a*) Identification of each standard software package proposed for export, by name or other description, followed by a detailed functional description of the use of each software program.

(*b*) Means by which each software program identified by (a), above, is intended to be conveyed, *i.e.*, source or object code, supporting manuals, or other material that is intended to convey information related to such programs, with a description of the scope and content of each form.

(*c*) Information required by (a) and (b), above, as relates to non-standard, or customized software, intended for export.

(*d*) An explanation of why software proposed for export in other than object form is required.

(*e*) A description of the scope of training of persons receiving the software and/or the scope of the software maintenance that is proposed, as related to software programs identified above, or independent of actual software products intended for export.

(*f*) A statement as to whether any software intended for export has been previously exported in the same form. Differences in previously exported software, *e.g.*, source and object form, supporting material, and scope or character of training, should be explained.

(*g*) The relationship of each software program to the avowed end-use of the hardware equipment.

* * * * *

PART 379—TECHNICAL DATA

§ 379.4 [Amended]

b. A footnote is added following the word "commodity" in 379.4(b)(1)(iv) as follows:

Section 376.10(a)(1)(vii) requires exporters of digital computer equipment to describe on their license applications any software, including that shipped under General License GTDR, to be used with the equipment.

c. A new § 379.5(e)(3) is added as follows:

§ 379.5 Validated license applications.

(e) * * *

(3) *Computer Software.* Applications to export software subject to validated export licenses should provide the information detailed in § 376.10(a)(1)(vii), and in addition, should identify the location, origin, and model of the equipment with which the software will be used. For software, the applicant should indicate on the application the Commodity Control List Processing Code for the equipment with which the software will be used.

* * * * *

(Secs. 5, 13, 15, and Pub. L. 96-72, 93 Stat. 503, to be codified at 50 U.S.C. App. 2401 *et seq.*; Executive Order 12214, 45 FR 29783 (May 6, 1980); Department Organization Order 10-3, 45 FR 6141 (January 25, 1980); International Trade Administration Organization and Function Order 41-1, 45 FR 11862 (February 22, 1980); and International Trade Administration Organization and Function Order 41-4 (effective August 26, 1980))

Dated: December 2, 1980.

Kent N. Knowles,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 80-37862 Filed 12-4-80; 8:45 am]

BILLING CODE 3510-25-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 3

Revision of Registration Regulations; Final Rules; Designation of New Part

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules and designation of new Part 3.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has revised certain of its regulations which relate to the registration of futures commission merchants, floor brokers, associated persons, commodity trading advisors and commodity pool operators. The regulations require that each applicant for registration as an associated person ("AP") be "sponsored" by a futures commission merchant ("FCM") which must screen that person's application and certify that it is accurate and complete to the best of the FCM's knowledge, information, and belief. The regulation generally makes AP registration coextensive with, and conditioned upon, the registrant's association with the sponsoring FCM. The new regulations also require fingerprinting for all categories of registrants with the Commission; certain registrants and principals of registrants are, however, exempted from that requirement.

The new sponsorship requirements are necessary to establish a uniform industry-wide minimum standard for pre-employment evaluation of associated persons; to insure that all FCMs develop programs that will result in the overall upgrading of APs registered with the Commission; to implement fully the provisions of the Commodity Exchange Act that require an individual to be registered as an associated person of a particular FCM; and to reduce a regulatory burden by eliminating the present biennial renewal requirement for all APs and by substituting therefor registration for as long as the person remains associated with a specified registered FCM or its agent. The fingerprinting requirements are necessary to permit improvements in the Commission's background checking of applicants for registration, to permit positive identification of certain individuals with common names, to reduce the number of applications filed by individuals who are unfit for registration, and to facilitate fitness reviews of registrants on a spot and periodic basis.

In addition, for the sake of clarity and to facilitate their use, the Commission, in adopting these rules, has reorganized and consolidated most of its registration regulations in a new Part 3 of Title 17 of the Code of Federal Regulations.

DATES: The final rules and designation of Part 3 are effective July 1, 1981.

FOR FURTHER INFORMATION CONTACT: Robert P. Shiner, Assistant Director for Registration, or Kenneth M. Rosenzweig, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Telephone: (202) 254-9703 or 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

On March 20, 1980, the Commission proposed substantial revisions to its registration regulations and, in particular, to the requirements governing the registration of associated persons. 45 FR 18356. The Commission has carefully considered all of the comments received in response to that proposal and, based in part upon those comments, has determined to make certain changes in those proposed rules. The Commission indicated in its proposal that the revised Form 8–R would be published for public comment at a later date and that other related issues would be addressed at that time, and in a separate **Federal Register** notice published today, the Commission is proposing for public comment the revised Form 8–R, new Forms 8–S and 8–T, and additional regulations to implement fully the regulations it is now adopting.

In addition, the Commission has reorganized most of its registration regulations and consolidated them in Part 3 of Chapter I, Title 17 of the Code of Federal Regulations.[1] A table which correlates both existing regulations and the Commission's earlier proposal with the new section references under Part 3 is set forth at the end of this supplementary information. Unless otherwise indicated, all references in the text which follows will be to the newly adopted Part 3.

B. Major differences between proposed and final rules

As proposed, the regulations would have required the fingerprinting of all registrants and principals of registrants. The Commission has continued to evaluate this proposal in view of its regulatory objectives in revising the registration program and of the role of fingerprinting in that program. Based upon these considerations, the Commission has determined that its objectives can be met, while saving both the Commission and the industry what might otherwise be an unwarranted expenditure of time and money, by exempting, in general, existing registrants and principals from the fingerprinting requirement. In addition, the Commission has made a number of other changes in the final regulations which will reduce the costs of compliance with the fingerprinting requirements for those persons who are not so "grandfathered."

The proposed regulations would have required an FCM sponsoring the registration of an associated person to verify the applicant's entire ten-year education and employment history, as provided on the Form 8–R. Throughout this rulemaking proceeding, the Commission has sought to refine its objectives with care and to be sure that whatever burdens were imposed upon the industry were no greater than necessary to accomplish the Commission's goals. The Commission believes that an applicant's most recent employment and educational history is of greatest importance; accordingly, the objectives of FCM "screening" will be met by requiring FCMs to verify only the preceding five years of that history.

When the Form 8–R is being used as an application for AP registration, the Commission has modified its proposal to allow a sponsoring FCM to submit the certifications required by these regulations separately from the rest of that Form. Thus, the Commission will be able to proceed with its agency and Federal Bureau of Investigation ("FBI") checks on the basis of the Form 8–R and fingerprint card while the FCM proceeds with its screening of the application. The Commission believes that this "dual processing" can significantly shorten the time required for an AP to become registered without any sacrifice of the regulatory goals which have made this rulemaking necessary.

II. Summary Analysis of the Final Rules

Fingerprinting. As proposed, the regulations would have required the one-time filing of a fingerprint card by each "principal," as defined, of an FCM,[2] commodity trading advisor ("CTA")[3] and commodity pool operator ("CPO")[4] at the time the FCM, CTA or CPO first filed for renewal of registration after the effective date of the proposed regulations.[5] The proposed regulations would have similarly required the one-time filing of a fingerprint card by all floor broker applicants and registrants.[6] Finally, the proposed regulations would have required each currently registered associated person[7] to file a fingerprint card at the time his current registration expired.[8]

Thirty of the thirty-five written comments received by the Commission addressed the proposed fingerprinting requirements. Some of the commentators specifically endorsed fingerprinting as a means of deterring unfit individuals from entering the industry while others were opposed to the proposed requirements on the grounds that fingerprinting was unnecessary and would not substantially further the Commission's stated objectives. A number of commentators objected to the additional costs associated with the proposed

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[1] Other regulations which set forth either further registration requirements or exemptions from registration remain unaffected. *See, e.g.*, 17 CFR 1.10 (financial reports of futures commission merchants); 17 CFR 4.13 (exemption from registration for certain commodity pool operators and commodity trading advisors). The Commission has recently proposed amendments to § 4.13 which would broaden the exemption from registration for certain commodity pool operators 45 FR 51600, 51605 (August 4, 1980).

[2] A futures commission merchant is an individual, association, partnership, corporation, or trust engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market and that, in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom. Section 2(a)(1) of the Commodity Exchange Act ("Act"), 7 U.S.C. 2.

[3] A commodity trading advisor is any person who, for compensation or profit, engages in the business of advising others, either directly or through publications or writings, as to the value of commodities or as to the advisability of trading in any commodity for future delivery on or subject to the rules of any contract market, or who for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning commodities; but does not include (i) any bank or trust company, (ii) any newspaper reporter, newspaper columnist, newspaper editor, lawyer, accountant, or teacher, (iii) any floor broker or futures commission merchant, (iv) the publisher of any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation including their employees, (v) any contract market, and (vi) such other persons not within the intent of this definition as the Commission may specify by rule, regulation, or order: *Provided*, That the furnishing of such services by the foregoing persons is solely incidental to the conduct of their business or profession. Section 2(a)(1) of the Act, 7 U.S.C. 2. *See also* Section 4m of the Act, 7 U.S.C. 6m, *as amended by* Futures Trading Act of 1978, Pub. L. 95–405, § 8, 92 Stat. 870; 17 CFR 4.12, 4.13(b).

[4] A commodity pool operator is any person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market, but does not include such persons not within the intent of this definition as the Commission may specify by rule or regulation or by order. Section 2(a)(1) of the Act, 7 U.S.C. 2. *See also* 17 CFR 4.12, 4.13(a).

[5] Proposed §§ 1.10(a)(1)(iv), 1.10c(d), 1.10d(d).

[6] Proposed §§ 1.10a(a), (c).

[7] An associated person is any natural person who is associated with a futures commission merchant or with an agent of a futures commission merchant as a partner, officer, or employee (or a natural person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation or acceptance of customers' orders (other than in a clerical capacity) or (ii) the supervision of any person or persons so engaged. Section 1.3(aa); *see* Section 4k of the Act, 7 U.S.C. 6k, *as amended by* Futures Trading Act of 1978, Pub. L. 95–405, § 7, 92 Stat. 869–70. The Commission has recently issued an interpretative statement regarding the scope of the term "supervision" in the AP registration requirement in Section 4k of the Act. 45 FR 54032 (August 14, 1980).

[8] Proposed §§ 1.10b(c)(2), (d)(3).

fingerprinting requirements and, as described more fully below, were virtually unanimous in requesting that the Commission exempt (or "grandfather") certain individuals from those requirements as a means of reducing such costs.

The Commission has considered these comments and further analyzed its proposal. As a result of these further considerations, the Commission believes that certain amendments can be made in the fingerprinting proposal to reduce the cost of the program without at the same time so altering the program that it would not meet the regulatory objectives, set forth above, which have made fingerprinting necessary.

The first such change relates to the suggestion of several commentators that the Commission waive the fingerprinting requirement for those individuals who are registered with the Commission or who are currently affiliated with registrants as principals. The Commission believes that this suggestion has merit, that, as mentioned, the regulatory objectives of the fingerprinting program can be met, and the cost associated with fingerprinting—both to the industry and to the Commission—can be reduced by providing such a limited exemption. Accordingly, the Commission has determined not to require the fingerprinting of those principals and floor brokers [9] who have a "current" [10] Form 8–R or Form 94 on file with the Commission on July 1, 1981, the effective date of the regulations. Further, any principal or floor broker who does not qualify for the exemption described above and who is therefore required to file a fingerprint card with the Commission in accordance with §§ 3.10–3.14, in general will not be required to file another fingerprint card in connection with a later registration as a floor broker [11] or affiliation with a registrant as a principal. [12]

As noted above, proposed § 1.10b (d)(3) would have required an associated person to be fingerprinted at the time his current registration expired if he wished to remain associated with the sponsoring futures commission merchant or its agent as an associated person. For the reasons stated with respect to principals and floor brokers, the Commission has determined that the costs of such a requirement outweigh the regulatory benefits. The regulations have therefore been modified so that an associated person who is registered as such on July 1, 1981 will not be required to be fingerprinted when he must become sponsored by his firm at the expiration of his existing registration; such a person will, however, be required to file a fingerprint card if he subsequently applies for re-registration with a different sponsoring FCM or its agent. [13]

Three commentators also questioned the need to obtain a fingerprint card each time an individual applied for registration or re-registration as an associated person. The Commission, however, believes that this requirement is necessary. The CFTC routinely sends copies of Form 8–Rs to the FBI to determine if the applicant for registration or principal has a criminal record, and the FBI check reveals criminal records for a significantly greater percentage of AP applicants than for either floor broker applicants or principals. Further, based upon the Commission's experience through its administrative proceedings against registrants, the volume of complaints received, and the reparations cases which have been brought, it appears that APs are the category of registrant most likely to be involved in activities which bring into question their fitness. Moreover, such activity frequently occurs in a time frame fairly contiguous to the AP's change in firm. The Commission notes in this context, however, that any AP who, on the July 1, 1981 effective date of § 3.12, is associated with an FCM or its agent and is thereafter sponsored by that FCM will not be required to be fingerprinted as long as he remains with that FCM or its agent.

A number of commentators noted that an individual simultaneously applying for registration in both the commodity and securities industries (*e.g.*, as an AP and as a registered securities representative) might be permitted to start selling securities based on a "clean" fingerprint record with the FBI, but be precluded from registration as an AP because the fingerprints submitted with his Form 8–R were illegible and could not be checked by the FBI at the same time. The commentators suggested that in such instances, the Commission should modify the proposed rules so that an FCM/securities broker or dealer could file photocopies with the CFTC of all reports, including the fingerprint card and the criminal history sheet, if any, produced for the securities industry registration. The Commission believes this is a sensible suggestion and is therefore adding a new § 3.21 for its implementation. [14]

Some commentators urged the Commission to adopt a regulation comparable to Securities and Exchange Commission ("SEC") rule 17f–2(b), [15] which would exempt from fingerprinting those persons who are fingerprinted pursuant to any other law, rule, or regulation of any state, the Federal government, or respective agencies thereof, and submit, or cause to be submitted, such fingerprints to the Attorney General of the United States for identification and appropriate processing. In the past, the Commission has taken steps to reduce or avoid, in appropriate instances, the duplicative regulation of those Commission registrants which are also subject to regulation by the SEC. [16] In this instance, however, the Commission believes that adoption of the suggested approach is inappropriate in view of the differing statutory standards of fitness that are applied in the respective industries [17] and in view of the exemptions described above which the Commission is adopting for existing CFTC registrants and principals and for any individual who wishes to submit a photocopy of his FBI report. [18]

In the **Federal Register** release announcing the proposed regulations,

[9] A floor broker is any person who, in or surrounding any "pit," "ring," "post," or other place provided by a contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery on or subject to the rules of any contract market. Section 2(a)(1) of the Act, 7 U.S.C. 2.

[10] Section 3.1(b).

[11] Section 3.11(b).

[12] Sections 3.10(a)(2)(ii), (c)(2); 3.13(a)(2)(ii), (c)(2); 3.14(a)(2)(ii), (c)(2).

[13] Sections 3.12(c)(3), (d)(3).

[14] The exemption in § 3.21 is limited, however, and a person who is simultaneously applying for registration in the commodity and securities industries will not be permitted to submit a Form 8–R without a required fingerprint card in contemplation of later submitting photocopies of the FBI report produced for his securities industry registration.

[15] 17 CFR 240.17f–2(b).

[16] For example, the Commission amended §§ 1.10, 1.12, 1.16, 1.18 and 1.52 of its regulations to allow those FCMs, or applicants for registration therefor, which are registered with the SEC as securities brokers or dealers to comply with the Commission's financial reporting requirements by filing copies of Part II of the SEC's Financial and Operational Combined Uniform Single Report in lieu of the Commission's Form 1–FR. 45 FR 2019 (January 10, 1980).

[17] *Compare* Sections 4n (5), (6) and 8a (2), (3) of the Act, 7 U.S.C. 6n (5), (6) and 12a (2), (3) *and* 45 FR 14210 (March 5, 1980) (interpretation of factors for denial of registration for other good cause shown pursuant to Section 8a(2)(B) (ii) of the Act, 7 U.S.C. 12a(2)(B) (ii)) *with* Sections 3(a)(39) and 15(b)(4) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(39), 78o(b)(4).

[18] The Commission further notes that the SEC has indicated that its rule 17f–2(b) is not applicable if the fingerprints have been submitted in a connection other than employment or association with the *present employer*. Consequently, persons who were fingerprinted for induction into the Armed Forces, for governmental employment, or for employment with entities other than the present employer cannot claim that exemption. 41 FR 13594, 13595 (March 31, 1976).

the Commission indicated that, based upon the comments received and its own further evaluation of the proposed fingerprinting program, it might adopt further provisions designed to assure the identity of the fingerprinted individual. The Commission specifically invited suggestions regarding possible further security measures and invited comments as to the need for, appropriateness of, and possible added costs of such additional measures.[19] The comments received in response to this inquiry have not convinced the Commission that such further security measures are appropriate and the Commission has not amended the regulations to provide such measures. If experience with the fingerprinting program later reveals significant abuses, the Commission will consider further steps to assure the integrity of the program at that time.[20]

"Principal." Several commentators observed that the Commission's proposed definition of the term "principal" was too broad in that it could include individuals who have no relationship to those activities of a registrant which are subject to regulation by the Commission. Two commentators further suggested that the definition should include the term "designated supervisor" because there are numerous instances in which a sales location may not have a formally designated branch office manager or in which the person responsible for supervising commodity business in accordance with Commission regulation 166.3 [21] may be someone other than the branch office manager. The Commission agrees and has included the suggested term. In addition, the Commission has reorganized § 3.1(a) to clarify the scope of its coverage.[22]

Registration of FCMs, CTAs and CPOs. Proposed §§ 1.10(a)(1), 1.10c and 1.10d would have required the existing principals of registered FCMs, CTAs, or CPOs to be fingerprinted and to complete a Form 8-R and would have required firms to file those Forms and fingerprint cards for their principals. For the reasons already stated, the Commission has decided to "grandfather" existing principals and excuse them from those requirements. In addition, the Commission has retained that portion of its proposal which exempts from those requirements any principal who has already filed a Form 8-R and a fingerprint card in accordance with the requirements of §§ 3.10-3.14.[23] Thus a principal of an applicant for initial registration as an FCM, CTA or CPO or a newly added principal of an existing FCM, CTA or CPO will, at most, be required to submit a Form 8-R and a fingerprint card only once in connection with being a principal.[24]

A number of commentators noted the lack of any registration requirement for the non-clerical employees and agents of CTAs and CPOs who are involved in advising members of the public regarding commodities and in raising capital for commodity pools and stated that this results in inadequate protection for commodity customers and that the Commission should adopt regulations requiring the registration of such individuals. The Commission is well aware of these arguments and has, in connection with a separate proposal to amend Part 4 of its regulations, given notice that it is considering adopting such rules and has invited public comment on this subject.[25]

Registration of associated persons. Beginning July 1, 1981, an individual will have to be associated with a particular, sponsoring FCM or its agent to be granted registration as an AP. With the exceptions specified in § 3.12(b), such a registration will remain in effect indefinitely; the current requirement of biennial renewal of registration will, therefore, be eliminated. Further, and except as specified in the expedited registration provisions of § 3.12(d), each application for registration as an associated person will be deemed to be an application for initial registration, subject to denial or withdrawal under Section 8a(2) of the Act [26] and § 3.20 of the Commission's regulations.[27]

While a number of commentators were supportive of the Commission's proposal, other commentators voiced concern that the regulation might be unduly burdensome to the sponsoring FCMs. The Commission has carefully considered these comments and has found, based upon the record, that the benefits enumerated above far outweigh the added costs to FCMs. Based upon its careful review of the record, however, the Commission is persuaded that certain changes, discussed below, accommodate the majority of the commentators' concerns without an unacceptable sacrifice of the Commission's regulatory objectives.

Under section 3.12(c)(1)(ii), the sponsoring FCM must verify the accuracy of the education and employment history supplied by an AP applicant while § 3.12(c)(1)(iii) requires the firm to certify that to the best of its knowledge, information, and belief, all of the publicly available information supplied on by Form 8-R is accurate and complete. As the Commission stated when it proposed these requirements, background screening is already conducted by many firms and the required screening procedures are not expected to increase significantly the costs for such firms. Moreover, the proposed sponsorship requirements do no more than make uniform what should be the ordinary and customary practice for every responsible FCM and the anticipated upgrading of quality overall among registrants should ultimately lower costs by reducing turnover of personnel, lost business due to customer dissatisfaction, and litigation arising from the acts of employees.[28]

The Commission appreciates, however, as some commentators pointed out, that an FCM may need 4-5 weeks to complete its background check of the applicant prior to the submission of the Form 8-R. Further, as was noted in the **Federal Register** notice proposing these regulations, a minimum of 8-10 weeks is required for the Commission to process an application after it is filed, and in routine cases, most of this time is necessary for the FBI to check its records.[29] In view of the comments and its own further study of this problem, the Commission believes that the overall time required can be reduced by permitting the Commission and the FCM to proceed simultaneously with their processing of the Form 8-R and the final regulation has been modified to permit this "dual processing" of applications. As adopted, the final regulations permit an FCM to file the Form 8-R, registration fee and, in appropriate cases, fingerprint card before the firm completes its required checks; the FCM is then able to submit the required certifications when

[19] 45 FR 18356, 18357 n.15 (March 20, 1980).

[20] Applicants for registration and principals should be aware that the willful misrepresentation of the identity of an individual by the submission to the Commission of a false fingerprint card or photocopy thereof would constitute a criminal offense. Section 9(b) of the Act, 7 U.S.C. 13(b); 18 U.S.C. 1001; *see* 18 U.S.C. 2. *See also* Section 13(a) of the Act, 7 U.S.C. 13c(a).

[21] 17 CFR 166.3.

[22] In the **Federal Register** release announcing the proposed regulations, the Commission indicated that proposed § 1.3(v), if adopted, would render unnecessary the separate definition of "principal" contained in 17 CFR 4.10(e). 45 FR 18356, 18358. Upon reconsideration of the differing interests to be served by registration and by the disclosure requirements of the CPO/CTA rules (of which § 4.10(e) is a part), the Commission has determined not to rescind § 4.10(e).

[23] Sections 3.10 (a)(2), (c); 3.13 (a)(2), (c); 3.14 (a)(2), (c).

[24] Those persons remain subject, however, to the provisions of § 3.12, which governs the registration of associated persons, and to the supplemental filing provisions of § 3.22.

[25] 45 FR 51600, 51601 (August 4, 1980).

[26] 7 U.S.C. 12a(2).

[27] Existing § 1.10e, 17 CFR 1.10e, has been redesignated as § 3.20, effective July 1, 1981.

[28] 45 FR 18356, 18357 (March 20, 1980).

[29] *Id.* at 18357 n.14.

it has completed its screening of the application.[30]

The Commission specifically requested comments concerning the appropriateness and desirability of retaining the current educational background question on Form 8–R.[31] Most commentators who responded favored retaining the question, but some of them noted the difficulty of verifying such information, particularly where such information dates back several years, and alluded to a similar problem with respect to the applicant's employment history. The Commission, having carefully weighed the stated objectives of the regulations against these comments and its own desire to avoid undue regulatory burdens, has concluded that FCM verification for these categories can be limited to the preceding five years. The Commission would expect to alter this requirement if its experience indicated the need to do so.

Several commentators apparently did not clearly understand the scope of the requirement that sponsoring FCMs certify the publicly available information supplied by the applicant on Form 8–R. The Commission, therefore, wishes to provide further guidance. If, for example, an AP applicant or registrant answered "Yes" in response to any of the questions in the proposed Form 8–R which relate to regulatory and judicial sanctions (questions 14–19), the sponsoring FCM would be required to make whatever inquiries were necessary to certify that the individual's representations about, and documentation of, the status or disposition of the matter were, in fact, accurate and complete. If in certain instances, however, a sanction or judgment has been sealed or expunged so that the information in question is not "publicly available," a sponsoring FCM would be unable and therefore not required to certify its accuracy. Further, while § 3.12(c)(1)(iii) requires the sponsoring FCM to investigate and document any adverse, publicly available information *which is reflected in the application,*[32] the Commission wishes to emphasize that the regulation would not, as one commentator stated, "require an FCM to search the public records in every county in every state, peruse the records of the federal courts, or * * * obtain negative information in an applicant's past when there is no indication of such on the application."

One commentator inquired as to what procedure the Commission contemplated when an FCM, consistent with § 3.12(c)(1)(i), has certified its intention to hire an applicant if he becomes registered as an AP but subsequently, the firm's business needs change or it obtains information about the applicant which calls into question his fitness for registration. In such an instance, the sponsoring FCM or its agent could simply decline to hire the individual and, consistent with § 3.31(c)(1), notify the Commission of that decision. In those instances where the decision is based upon the FCM's discovery of such information about the applicant, a decision to withdraw an offer of employment would be consistent with one of the underlying purposes of FCM sponsorship of associated persons.

The Commission specifically invited comments on whether it would be appropriate to prohibit an associated person from having more that one sponsor at a time.[33] The Commission has carefully considered the comments it received on this point, virtually all of which were in opposition to "multiple sponsorship." In view of the obvious difficulties of supervision in such a situation[34] and in view of the inherent possibilities for conflicts of interest that might arise if an AP were to have more than one sponsor, the Commission has determined that it is necessary and appropriate generally to prohibit an AP from being associated with more than one FCM or agent of an FCM at any time.[35] In making this finding, the Commission has concluded that the possible adverse effects of such a limitation on competition are outweighed by its regulatory benefits. Based upon both the Commission's past experience and upon the comments, it appears that very few persons will be adversely affected by this decision. The Commission nonetheless wishes to emphasize that the regulations provide an exemption procedure for any person who is so affected.[36]

Section 3.12(d) provides an expedited re-registration procedure for certain APs which was generally supported by the commentators. Some of those commentators were concerned, however, because the proposal would have made it necessary, as a practical matter, for the sponsoring FCM to telephone the Commission's Registration Unit to confirm that the applicant qualified for the expedited procedure, thereby causing unwarranted delays. The Commission shares this concern and has modified the regulation so that it is the applicant who must certify his eligibility for the expedited procedure.[37]

As proposed, the expedited procedure described above would have been available, *inter alia,* to any person whose registration as an AP had terminated in the preceding thirty days.[38] In response to the Commission's specific request for comments concerning the appropriateness of this 30-day period,[39] several commentators stated that the grace period was too short. The Commission has doubled the permissible interval between sponsorships so that an AP will now have 60 days after the termination of his earlier employment during which he can use the expedited procedure. The Commission believes that to go beyond this 60-day period would increase the probability that adverse factors affecting the individual's fitness may have occurred in the interim and would, therefore, jeopardize the purposes of AP sponsorship.

One commentator noted that the proposed expedited registration procedure would not be available to any associated person who, *inter alia,* was the subject of a pending administrative proceeding which sought to deny, suspend or revoke that person's registration with the Commission.[40] This commentator suggested the deletion of this qualification because it would have the effect of withholding registration from such an applicant until he completed the "regular" registration process.

One of the central objectives of registration is to insure, to the extent reasonably possible, the fitness of each individual who is granted registration by the Commission and, as noted earlier, each association with an FCM or its agent will require such a grant of registration. The Commission, however, has carefully reviewed the proposed exception to the expedited registration

[30] Section 3.12(c)(2). The Commission has also increased from thirty to sixty days the time period in which an FCM is allowed to submit those items for an AP who has used the expedited registration procedures. Section 3.12(d)(3).

[31] 45 FR 18356, 18359 n.39 (March 20, 1980).

[32] *Id.* at 18359.

[33] *Id.* at 18356 n.4.

[34] *See* Commission rule 166.3, 17 CFR 166.3.

[35] Section 3.12(f).

[36] Section 3.12(g). A petition for relief from the prohibition against dual and multiple associations should reflect the agreement of not only the affected AP(s), but also of both or all of the FCMs that would be sponsoring the AP(s).

[37] Section 3.12(d)(2); proposed Form 8–S.

[38] Proposed § 1.10b(d). Both the Commission's proposal and the regulation it is adopting today also make this procedure available to any person whose registration as an AP was *granted* within the preceding year or who, at the time of the first expiration of that person's registration as an AP subsequent to the July 1, 1981 effective date of the regulation, is associated with the sponsoring FCM or its agent as an associated person. Section 3.12(d)(1); proposed § 1.10b(d).

[39] 45 FR 18356, 18359 n.41 (March 20, 1980).

[40] Proposed § 1.10b(d)(1)(iii).

procedure and has determined that it should be deleted.

Section 3.12(d)(1)(iv) instead requires that in those instances where the applicant is the subject of pending proceedings to deny, suspend or revoke his registration in any capacity or where the applicant has, within the preceding year, been allowed to withdraw an application for registration in any capacity, the applicant must certify that the sponsoring FCM has been given a copy of the complaint or letter issued by the Commission in connection with that proceeding or withdrawal. The sponsoring FCM is not required to certify that it has received a copy of that complaint or letter unless the applicant has indicated that he is within the scope of that provision.[41] The Commission emphasizes, however, as it did when it proposed these regulations, that the granting of registration under this expedited procedure does not, and in fact, could not constitute a finding of fitness.[42]

In the **Federal Register** notice accompanying the proposed rules, the Commission proposed to delete the registration requirement for certain foreign associated persons.[43] One commentator requested clarification of whether an AP would have to register as such if he were employed by a non-domestic agent of an FCM and neither solicited nor accepted orders from persons residing within the United States. As long as a person neither solicits nor accepts orders from within, or from any person residing within, the United States, its territories or possessions, nor supervises any person or persons so engaged, he will not have to register as an AP, irrespective of whether he is associated with an FCM or with an agent of an FCM.

Agents of FCMs. Some commentators questioned whether an FCM can be expected to certify the intent of its agent to employ an applicant for AP registration. Section 3.12(c)(1)(i) requires an FCM only to certify its *present* intention, or that of its agent, to hire the applicant as an AP. The regulation does not, however, impose an inflexible obligation; if, as noted above, the business needs of the FCM or of the agent should change, or if the FCM discovers adverse information about the applicant in the course of its screening of the Form 8–R, the FCM can simply withdraw its sponsorship of the applicant and so notify the Commission.[44]

Certain commentators questioned generally the Commission's authority to require the sponsorship by an FCM of an AP who is associated with an agent of that FCM. The Commission's authority in this regard is clear. The Commission is empowered by the Act, and in particular, by Sections 4k (1) and (2), 4p, 8a(1), and 8a(5) thereof, to specify conditions under which a person may be registered as an AP.

Section 4k(1) of the Act makes it unlawful for any person to be associated with a futures commission merchant or its agent in any capacity which involves the solicitation or acceptance of customers' orders (other than in a clerical capacity) or the supervision of other persons so engaged unless (with exceptions not here relevant) that person is registered with the Commission. Section 4k(1) further makes it unlawful for an FCM or its agent to permit any person performing those functions to become or to remain associated with that FCM or its agent unless he has first been registered in accordance with that section. The Commission has determined that FCM sponsorship is necessary to assure that the applicant for registration will, in fact, be associated with an FCM as required by the Act. Further, in enacting Section 4k, Congress expected the Commission to grant registration only to those individuals who were fit to stand in a fiduciary relationship to the public.[45] As such, Congress authorized the Commission in Section 4k(2) to specify that all applications for registration as an associated person shall be "in the form and manner prescribed by the Commission, giving information and facts as the Commission may deem necessary," and it is axiomatic that "the width of administrative authority must be measured in part by the purposes for which it is conferred."[46] Thus, when Section 4k is read as a whole and in light of the underlying Congressional purpose, any question of the Commission's authority to require sponsorship is removed.

In addition, Section 8a(1) of the Act[47] authorizes the Commission to register APs "in accordance with rules and regulations and in [the] form and manner to be prescribed by the Commission * * *" while Section 4p provides, in pertinent part, that "[t]he Commission may specify by rules and regulations appropriate standards with respect to training, experience, and such other qualifications as the Commission finds necessary or desirable to insure the fitness of * * * those persons associated with futures commission merchants * * *." As such, it is within the Commission's discretionary authority to find, and the Commission has so found, that the sponsorship of an applicant for registration as an associated person is a "qualification" that is "necessary or desirable" to insure the applicant's fitness. This finding is consistent with the Congressional determination that the system of registration that existed prior to the 1974 amendments to the Act[48] was inadequate to control the abuses that were perpetrated by "customers' men" who had mishandled customers' accounts and who could change jobs without their new employer being aware of their derelictions. In amending the Act to require the registration of only those associated persons who were not found to be unfit, it was contemplated by the Congress that the Commission would prevent this problem from recurring in the future.[49]

The express power to promulgate regulations under Sections 4p and 8a(1) is supplemented by the Commission's broad general authority under Section 8a(5) "to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this Act."[50] Section 8a(5) enables the Commission not only to adopt regulations to effectuate a particular statutory provision but also to impose requirements to accomplish the Act's purposes even in the absence of a specific statutory source.[51] It is the judgment of the Commission that, consistent with Section 8a(5) of the Act, the requirements that the Commission is adopting today with respect to the registration of associated persons are reasonably necessary to effectuate Sections 4k, 4p, and 8a(1) of the Act and to accomplish one of the purposes of the Act, which is to assure the fitness of

[41] Section 3.12(d)(1)(v).

[42] 45 FR 18356, 18359 (March 20, 1980).

[43] *Id.* at 18360.

[44] *See* § 3.31(c)(1).

[45] 40 FR 20614, 20615 (1975); *cf.* Savage v. CFTC, 548 F. 2d 192, 196 (7th Cir. 1977); CFTC v. J. S. Love & Assocs. Options, Ltd., 422 F. Supp. 652, 659 (S.D.N.Y. 1976); Klatt v. International Trading Group, Ltd., [1977–1980 Transfer Binder] COMM. FUT. L. REP. (CCH) ¶20,636, at 22,598 (CFTC 1978).

[46] Permian Basin Area Rate Cases, 390 U.S. 747, 776 (1968).

[47] 7 U.S.C. 12a(1), *as amended by* Futures Trading Act of 1978, Pub. L. 95–405, § 17(1), 92 Stat. 874.

[48] Commodity Futures Trading Commission Act of 1974, Pub. L. 93–463, 88 Stat. 1389.

[49] *See* H.R. REP. 93–975, 93d Cong., 2d Sess. 78 (1974).

[50] 7 U.S.C. 12a(5).

[51] Ames v. Merrill Lynch, Pierce, Fenner and Smith, Inc., 567 F. 2d 1174, 1177–78 (2d Cir. 1977); Board of Trade Clearing Corp. v. United States [1977–1980 Transfer Binder] COMM. FUT. L. REP. (CCH) ¶20,534, at 22,206–07 (D.D.C. 1978), *aff'd.* No. 78–1263 (D.C. Cir. March 29, 1979).

those persons who are registered with the Commission as associated persons.

As noted above, a few of the commentators inquired as to the Commission's authority to require the sponsorship by an FCM of an AP who is associated with an agent of that FCM. A person associated with an agent of an FCM as an AP is necessarily an agent of that FCM. An FCM is, of course, responsible for the acts of its agents.[52] Thus, and for the reasons stated above with respect to the Commission's authority to require sponsorship, the Commission may similarly require the sponsorship by an FCM of those APs who are associated with an agent of an FCM.

Regulations being adopted without prior notice. The Commission is today adopting two regulations without prior notice—§ 3.1(b), which defines "current" with respect to a Form 8–R or a Form 94 that has been filed with the Commission, and § 3.21, which allows the filing in certain circumstances of a photocopy of a fingerprint card and any accompanying FBI report. Sections 3.1(b) and 3.21 are being adopted solely to enable the Commission to grant the specific exemptions discussed above from the general applicability of the fingerprinting requirements which are being adopted today. These sections impose no added obligations and, to the extent they affect substantive responsibilities, they do so in conjunction with amended fingerprinting requirements to reduce the costs of compliance. Accordingly, the Commission finds that prior notice of these regulations is unnecessary.

The Commission is also amending § 3.4 to provide notice of an AP's registration to the sponsoring FCM rather than to the AP. The Commission received comments suggesting this change and finds that it is consistent with proposed § 1.10b(c)(3). Prior notice of this change is, therefore, unnecessary.

The Commission is also making certain technical amendments to Commission regulation 1.10e (which is being renumbered as § 3.20). In general, the regulation provides streamlined procedural steps in certain enumerated circumstances either for the denial or withdrawal of a registration application or for the commencement of a hearing for the purpose of determining a person's fitness for registration. The amendments merely update the regulation in view of a recently published Commission interpretation of the grounds which constitute "other good cause" for denial of registration pursuant to Section 8a(2)(B)(ii) of the Act, 7 U.S.C. 12a(2)(B)(ii).[53] Prior notice of this change is, therefore, unnecessary.

Lastly, the Commission is amending existing § 1.15(a) of its regulations so that an individual who is registered solely as a floor broker or as an AP will not be required to re-register in the event of a change in the name of that individual. The Commission finds that the existing requirement in § 1.15(a) (and on and after July 1, 1981, § 3.32(a)) is unnecessary in its application to floor brokers and APs inasmuch as this information is already required, and would continue to be required, to be reported by floor brokers and APs to the Commission under its regulations.[54] Any person who is registered as an FCM, CTA or CPO will, however, continue to be required to apply for a new registration as such in the event of a change in name.

III. Table Cross-Indexing Existing and Proposed Regulations to New Section Numbers in 17 CFR Part 3

Existing or proposed section	Part 3 designation
§ 1.3(v)—Proposed	§ 3.1(a)
§ 1.7	§ 3.10(d)
§ 1.9	§ 3.2
§ 1.10(a)	§ 3.10(a)–(c)
§ 1.10a	§ 3.11
§ 1.10b	§ 3.12
§ 1.10c	§ 3.13
§ 1.10d	§ 3.14
§ 1.10e	§ 3.20
§ 1.10f—Proposed	§ 3.22
§ 1.11	§ 3.3
§ 1.13	§ 3.4
§ 1.14	§ 3.31(a)–(b)
§ 1.14(d)—Proposed	§ 3.31(c)(1)
§ 1.15	§ 3.32

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 2, 4d, 4e, 4f, 4k, 4m, 4n, 4p, and 8a thereof, 7 U.S.C. 2, 4 and 4a, 6d, 6e, 6f, 6k, 6m, 6n, 6p, and 12a, *as amended*, 92 Stat. 865 *et seq.*, the Commission hereby designates the following Part 3 of Chapter I of 17 CFR. In adopting these rules, the Commission has taken into consideration the public interest to be protected by the antitrust laws and has endeavored to take the least anticompetitive means of achieving the regulatory objectives of the Commodity Exchange Act.

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. Section 1.3(aa) is amended to read as follows:

§ 1.3 Definitions.

* * * * *

(aa) *Associated person.* This term means any natural person who (as provided in section 4k of the Act) is associated with a futures commission merchant or with an agent of a futures commission merchant, as a partner, officer, or employee (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (1) the solicitation or acceptance of customers' orders (other than in a clerical capacity) or (2) the supervision of any person or persons so engaged.

* * * * *

Minimum Financial and Related Reporting Requirements

2. The heading "MINIMUM FINANCIAL AND RELATED REPORTING REQUIREMENTS" is inserted preceding § 1.10.

§ 1.10 [Amended]

3. In § 1.10, the section heading is amended to read "Financial reports of futures commission merchants" and paragraph (a)(1) is deleted and reserved.

§§ 1.7, 1.9, 1.10a, 1.10b, 1.10c, 1.10d, 1.10e, 1.11, 1.13, 1.14 and 1.15 [Removed]

4. Sections 1.7, 1.9, 1.10a, 1.10b, 1.10c, 1.10d, 1.10e, 1.11, 1.13, 1.14 and 1.15 are deleted and reserved and the heading "Registration" preceding § 1.7 is deleted.

5. Chapter I of 17 CFR is revised by adding a new Part 3 as follows:

PART 3—REGISTRATION

Sec.

Authority: 7 U.S.C. 2, 4, 4a, 6d, 6e, 6f, 6k, 6m, 6n, 6p, and 12a.

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[52] Section 2(a)(1) of the Act, 7 U.S.C. 4; Commission rule 1.2, 17 CFR 1.2; *see* Commission rule 166.3, 17 CFR 166.3.

[53] 45 FR 14210 (March 5, 1980).

[54] Commission rule 1.14(b), 17 CFR 1.14(b); *see* § 3.31(b); proposed Form 8–R.

§ 3.1 Definitions.

For purposes of this part:

(a) *Principal.* Principal means, with respect to an applicant for registration, a registrant or a person required to be registered under the Act or these regulations: (1) any person including, but not limited to, a sole proprietor, general partner, officer, director, branch office manager or designated supervisor, or person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over activities of that person which are subject to regulation by the Commission; (2) any holder of more than ten percent of the outstanding shares of any class of stock; or (3) any person who has contributed more than ten percent of the capital.

(b) *Current.* As used in §§ 3.10–3.14, a current Form 8–R or Form 94 is any such Form which has been filed by or on behalf of a registrant or a principal if, subsequent to the filing of that Form, that registrant or principal has been continuously registered or continuously affiliated with a registrant as a principal.

§ 3.2 Registration as one type of person not included in registration as any other type of person.

Registration as one type of person subject to regulation under the Act shall not include registration as any other type of person subject to regulation under the Act, except that a natural person who is registered as a futures commission merchant or as a floor broker (and such registration is not suspended or revoked) need not also register as an associated person.

§ 3.3 Registration fees; form of remittance.

Each application for registration, or renewal thereof, as a futures commission merchant must be accompanied by a fee of $200, plus a fee of $6 for each domestic branch office and for each correspondent or agent, operating within the United States, authorized to solicit or accept orders for the purchase or sale of any commodity for future delivery on behalf of the applicant. Each application for registration, or renewal thereof, as a floor broker must be accompanied by a fee of $20. Each Form 8–R submitted in connection with the registration of an associated person must be accompanied by a fee of $20. Each application for registration, or renewal thereof, as a commodity trading advisor or commodity pool operator must be accompanied by a fee of $50. Fees must be remitted by money order, bank draft, or check, payable to the Commodity Futures Trading Commission. All registration fees are nonrefundable, unless the applicant withdraws the application before any processing of that application has occurred.

§ 3.4 Notification of registration.

Upon receipt of an application for registration or renewal thereof the Commission will, if registration is granted, notify the registrant that he has been registered under the Act, except that with respect to an application for registration of an associated person, the Commission will notify the futures commission merchant with which the registrant is associated.

§§ 3.5–3.9 [Reserved]

§ 3.10 Registration of futures commission merchants.

(a) *Initial registration.* (1) Application for initial registration as a futures commission merchant must be on Form 7–R, completed and filed with the Commission in accordance with the instructions thereto and the provisions of § 1.10 of this chapter.

(2) Each Form 7–R filed in accordance with the requirements of paragraph (a)(1) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. The provisions of this paragraph (a)(2) do not apply to any principal who: (i) on July 1, 1981, has a current Form 8–R or Form 94 on file with the Commission; or (ii) has submitted or caused to be submitted a Form 8–R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13 or 3.14.

(b) *Renewal of registration.* Application for renewal of registration as a futures commission merchant must be on Form 7–R, completed and filed with the Commission in accordance with the instructions thereto.

(c) *Addition of principals subsequent to filing of Form 7–R.* Within twenty days after any natural person becomes a principal of the applicant or registrant subsequent to the filing of a Form 7–R in accordance with the requirements of paragraphs (a) or (b) of this section, the applicant or registrant must file a Form 8–R with the Commission. The Form 8–R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. This filing need not be made for any such principal who: (1) on July 1, 1981, has a current Form 8–R or Form 94 on file with the Commission; or (2) has submitted or caused to be submitted a Form 8–R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13 or 3.14: *Provided,* that the futures commission merchant must notify the Commission within twenty days of the name of such added principal on Form 3–R.

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

§ 3.11 Registration of floor brokers.

(a) [Reserved]

(b) *Initial registration.* Application for initial registration as a floor broker must be on Form 8–R, completed and filed with the Commission in accordance with the instructions thereto. Each applicant for initial registration as a floor broker must file his fingerprints with the Form 8–R on a fingerprint card provided by the Commission for that purpose except that a fingerprint card need not be filed by any applicant who: (1) on July 1, 1981 has a current Form 8–R or Form 94 on file with the Commission; or (2) has filed a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13 or 3.14.

(c) *Renewal of registration.* Application for renewal of registration as a floor broker must be on Form 8–R, completed and filed with the Commission in accordance with the instructions thereto. A registrant applying for renewal of registration as a floor broker may incorporate by reference information furnished to the Commission by the registrant on a Form 8–R or supplement thereto previously filed with the Commission if such information remains accurate and unchanged.

§ 3.12 Registration of associated persons.

(a) *Registration required.* It is unlawful for any person to act as an associated person unless registered as such under the Act in accordance with the procedures in paragraphs (c) or (d) of this section, except that this section does not preclude any registered associated person who was registered on July 1, 1981 from continuing to act as such until that person's current registration expires.

(b) *Duration of registration.* A person registered in accordance with paragraphs (c) or (d) of this section and whose registration has neither been suspended nor revoked will continue to be so registered until: (1) the cessation of the association of the registrant with the futures commission merchant or its agents; or (2) the revocation, suspension, lapse, or withdrawal of the registration of the futures commission merchant with which the registrant is associated.

(c) *Application for registration.* Except as otherwise provided in paragraph (d) of this section, application for registration as an associated person must be on Form 8–R, completed and filed with the Commission in accordance with the instructions thereto.

(1) No person will be registered as an associated person in accordance with this paragraph (c) unless an officer, if the registered futures commission merchant is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship, of such futures commission merchant has signed and dated a certification in writing, stating that:

(i) It is the intention of the futures commission merchant or its agent to hire or otherwise employ the applicant as an associated person and that it will do so within thirty days after the receipt of the notification provided in accordance with paragraph (c)(4) of this section and that the applicant will not be permitted to solicit or accept customers' orders (other than in a clerical capacity) or to supervise any person or persons so engaged until the applicant is registered as an associated person in accordance with this section;

(ii) The futures commission merchant has verified the information supplied by the applicant in response to the questions on Form 8–R which relate to the applicant's education and employment history during the preceding five years, except that this paragraph (c)(1)(ii) does not apply to any person who, at the time of the first expiration of that person's registration as an associated person subsequent to July 1, 1981, is associated with the certifying futures commission merchant or its agent; and

(iii) To the best of the futures commission merchant's knowledge, information, and belief, all of the publicly available information supplied by the applicant on Form 8–R is accurate and complete: *Provided,* That it is unlawful for the futures commission merchant to make the certification required by this paragraph (c)(1)(iii) if the futures commission merchant knew or should have known that any of that information is not accurate and complete.

(2) The certification required by paragraph (c)(1) of this section may be submitted with the Form 8–R or may be submitted separately at a later date.

(3) Each Form 8–R filed in accordance with the requirements of paragraph (c) of this section must be accompanied by the fingerprints of the applicant on a fingerprint card provided by the Commission for that purpose, except that this paragraph (c)(3) does not apply to any person who, at the time of the first expiration of that person's registration as an associated person subsequent to July 1, 1981, is associated with the certifying futures commission merchant or its agent as an associated person.

(4) When the Commission determines that an applicant for registration as an associated person is not unfit for such registration, it will provide notification in writing to the futures commission merchant which has made the certifications required by paragraph (c)(1) of this section that the applicant's registration as an associated person is granted contingent upon the futures commission merchant or its agent hiring or otherwise employing the applicant as such within thirty days.

(d) *Special registration procedures for certain persons.* (1) Any person whose registration as an associated person has terminated within the preceding sixty days, whose registration in accordance with this section has been granted within the preceding twelve months or who, on or prior to the first expiration of that person's registration as an associated person subsequent to July 1, 1981, is associated with the futures commission merchant making the certification permitted by paragraph (d)(1)(i) of this section or its agent will be registered as an associated person of a registered futures commission merchant or its agent upon the mailing by that futures commission merchant to the Commission of written certifications stating:

(i) That such person has been hired or is otherwise employed by that futures commission merchant or its agent;

(ii) That such person's registration as an associated person is not suspended or revoked;

(iii) That such person is eligible to be registered in accordance with this paragraph (d);

(iv) Whether there is a pending proceeding under section 6(b) of the Act or former § 1.10e or § 3.20 to deny, suspend or revoke such person's registration in any capacity or if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in former §1.10e or § 3.20 and, if so, that the certifying futures commission merchant has been given a copy of the complaint or letter issued by the Commission in connection therewith; and

(v) That the futures commission merchant has received a copy of the complaint or letter issued by the Commission if the applicant for registration has certified, in accordance with paragraph (d)(1)(iv) of this section, that there is a proceeding pending against him as described in that paragraph or that the Commission has permitted the withdrawal of an application for registration as described in that paragraph.

(2) The certifications permitted by paragraphs (d)(1)(i) and (d)(1)(v) of this section must be signed and dated by an officer, if the registered futures commission merchant is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship. The certifications permitted by paragraphs (d)(1)(ii)–(iv) of this section must be signed and dated by the applicant for registration as an associated person.

(3) Within sixty days of mailing the certifications permitted by paragraph (d)(1) of this section, the associated person and the futures commission merchant must complete and the futures commission merchant must file with the Commission a Form 8–R in accordance with the instructions thereto. The Form 8–R must contain the certifications required by paragraphs (c)(1)(ii)–(iii) of this section and must be accompanied by the fingerprints of the applicant on a fingerprint card provided by the Commission for that purpose except that a fingerprint card does not have to be submitted for any person who, at the time of the first expiration of that person's registration as an associated person subsequent to July 1, 1981, is associated with the certifying futures commission merchant or its agent as an associated person.

(e) *Retention of records.* The futures commission merchant must retain in accordance with § 1.31 of this chapter such records as are necessary to support the certifications required by this section.

(f) *Dual and multiple associations prohibited.* No person who is associated with a futures commission merchant or with an agent of a futures commission merchant as an associated person may be simultaneously associated with any other futures commission merchant or with any other agent of a futures commission merchant as an associated person.

(g) *Petitions for exemption.* (1) Any person adversely affected by the operation of this § 3.12 may file a sworn petition with the Secretary of the Commission, which petition must set forth with particularity the reasons why that person believes that an applicant should be exempted from the requirements of this section and why such an exemption would not be contrary to the public interest. The petition will be granted or denied by the Commission on the basis of the papers filed. The Commission may grant such a petition if it finds that the exemption is not contrary to the public interest and the purposes of the provision from which exemption is sought. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

(2)(i) Until such time as the Commission orders otherwise, the Commission hereby delegates to the Director of the Division of Trading and Markets or his designee the authority to grant or deny petitions filed pursuant to this paragraph (g).

(ii) The Director of the Division of Trading and Markets may submit to the Commission for its consideration any matter which has been delegated to him pursuant to paragraph (g)(2)(i) of this section.

§ 3.13 Registration of commodity trading advisors.

(a) *Initial registration.* (1) Application for initial registration as a commodity trading advisor must be on Form 7–R, completed and filed with the Commission in accordance with the instructions thereto.

(2) Each Form 7–R filed in accordance with the requirements of paragraph (a)(1) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. The provisions of this paragraph (a)(2) do not apply to any principal who: (i) on July 1, 1981, has a current Form 8–R or Form 94 on file with the Commission; or (ii) has submitted or caused to be submitted a Form 8–R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13 or 3.14.

(b) *Renewal of registration.* Application for renewal of registration as a commodity trading advisor must be on Form 7–R, completed and filed with the Commission in accordance with the instructions thereto.

(c) *Addition of principals subsequent to filing of Form 7–R.* Within twenty days after any natural person becomes a principal of the applicant or registrant subsequent to the filing of a Form 7–R in accordance with the requirements of paragraphs (a) or (b) of this section, the applicant or registrant must file a Form 8–R with the Commission. The Form 8–R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of the principal on a fingerprint card provided by the Commission for that purpose. This filing need not be made for any such principal who: (1) on July 1, 1981, has a current Form 8–R or Form 94 on file with the Commission; or (2) has submitted or caused to be submitted a Form 8–R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13 or 3.14: *Provided,* that the commodity trading advisor must notify the Commission within twenty days of the name of such added principal on Form 3–R.

§ 3.14 Registration of commodity pool operators.

(a) *Initial registration.* (1) Application for initial registration as a commodity pool operator must be on Form 7–R, completed and filed with the Commission in accordance with the instructions thereto.

(2) Each Form 7–R filed in accordance with the requirements of paragraph (a)(1) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. The provisions of this paragraph (a)(2) do not apply to any principal who: (i) on July 1, 1981, has a current Form 8–R or Form 94 on file with the Commission; or (ii) has submitted or caused to be submitted a Form 8–R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13 or 3.14.

(b) *Renewal of registration.* Application for renewal of registration as a commodity pool operator must be on Form 7–R, completed and filed with the Commission in accordance with the instructions thereto.

(c) *Addition of principals subsequent to filing of Form 7–R.* Within twenty days after any natural person becomes a principal of the applicant or registrant subsequent to the filing of a Form 7–R in accordance with the requirements of paragraphs (a) or (b) of this section, the applicant or registrant must file a Form 8–R with the Commission. The Form 8–R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. This filing need not be made for any such principal who: (1) on July 1, 1981, has a current Form 8–R or Form 94 on file with the Commission; or (2) has submitted or caused to be submitted a Form 8–R and a fingerprint card in accordance with requirements of §§ 3.10, 3.11, 3.12, 3.13 or 3.14: *Provided,* that the commodity pool operator must notify the Commission within twenty days of the name of such added principal on Form 3–R.

§§ 3.15–3.19 [Reserved]

§ 3.20 Delegation of authority to deny registration.

(a) The Director or Deputy Director of the Division of Trading and Markets may at any time give written notice to any applicant for registration in any capacity under the Commodity Exchange Act, stating that:

(1) Information has come to his attention which tends to show that one or more of the following circumstances exist: That the applicant or any general partner, officer, director, person performing similar functions, controlling person, or holder of more than ten percent of the stock of the applicant—

(i) Was convicted of any felony in any State or Federal court, or was debarred by any agency of the United States from contracting with the United States, or the applicant willfully made a false or misleading material statement in his application or willfully omitted to state a material fact in connection with the application; or

(ii) Within ten years preceding the filing of the application has been convicted of a misdemeanor which (A) involves any transactions or advice concerning any commodity, contract for future delivery of a commodity, or security; (B) arises out of conduct of the business of a futures commission merchant, associated person, floor broker, commodity trading advisor, commodity pool operator, securities broker, securities dealer, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or employee or affiliated person of any of the foregoing; or (C) involves embezzlement, defalcation, fraudulent conversion, misappropriation of funds, securities or other property, forgery, counterfeiting, false pretenses, gambling, or similar crimes reflecting upon the ability of the applicant, if registered, faithfully to discharge the fiduciary duties imposed by the Act; or

(iii) At the time of the application, is permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction, or is prohibited by agreement or settlement with the Commission or the Securities and Exchange Commission, or any State agency or governmental body, (A) from acting as a commodity trading advisor, commodity pool operator, futures commission merchant, floor broker, securities broker or dealer, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or as an associated or affiliated person or employee of any of the foregoing, or (B) from engaging in or continuing any conduct or practice in connection with any such activity or involving any transaction or advice concerning commodities, contracts for future delivery of commodities, or securities; or

(iv) Within ten years preceding the filing of the application, has been found by any court of competent jurisdiction, by the Commission or the Securities and Exchange Commission, or has admitted by agreement or settlement to which the Commission or the Securities and Exchange Commission is a party, (A) to have violated any provision of the Commodity Exchange Act, the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investors Protection Act of 1970, the Foreign Corrupt Practices Act of 1977, or any similar statute of a State or foreign jurisdiction, or any rule or regulation under any such statutes; (B) to have aided, abetted, counseled, commanded, induced, or procured the violation by any other person of such statutes or rules or regulations; or (C) to have failed reasonably to supervise, with a view to preventing violations of such statutes, rules or regulations, another person who commits such a violation, if such person is subject to his supervision; or

(v) Is subject to an outstanding order of the Commission denying trading privileges on any contract market to such person, or suspending or revoking the registration of such person as a commodity trading advisor, commodity pool operator, futures commission merchant, floor broker, or associated person, or suspending or expelling such person from membership on any contract market or futures association registered under the Act, or refusing such person registration in any capacity;

(2) This information, if true, is a basis upon which the applicant may be found unfit for registration and upon which the applicant's registration may be denied;

(3) Unless the applicant voluntarily withdraws his application it may be necessary, after further investigation of these facts, to institute the public procedures for denial of registration described in paragraph (b) of this section;

(4) In these circumstances, an applicant is required to reconfirm in writing that he wishes to have his application given further consideration; and

(5) Unless the applicant files with the Director or Deputy Director of the Division of Trading and Markets a notification in writing, within thirty days of the date of the notice that the applicant wishes to have his application for registration given further consideration, his application will be deemed to have been withdrawn and will be given no further consideration.

(b) On the basis of apparently credible evidence, the Executive Director may at any time give written notice to any applicant for registration in any capacity under the Commodity Exchange Act that:

(1) The Division of Trading and Markets and the Division of Enforcement allege and are prepared to prove that one or more of the circumstances set forth in paragraph (a)(1) of this section exist;

(2) The allegations set forth in the notice, if true, constitute a basis upon which the applicant may be found unfit for registration pursuant to Section 8a(2)(B) of the Commodity Exchange Act and upon which the applicant's registration may be denied;

(3) The applicant is entitled to a hearing at which he may challenge the truth of the allegations set forth in the notice or show cause why, notwithstanding the truth of those allegations, registration should nevertheless be granted;

(4) A hearing for these purposes may be obtained by filing a written request with the Executive Director within thirty days after the date of the notice to the applicant;

(5) If the applicant does not timely request a hearing he will be deemed to have waived his right to a hearing on all issues concerning his application; and

(6) If the applicant does not timely request a hearing the Commission or the Executive Director or Chief Administrative Law Judge (acting pursuant to authority delegated under paragraph (d) of this section) may thereafter decide whether to grant or deny his registration based upon the facts stated in the notice, which will not have been disputed and which may be deemed to be true for that purpose.

(c) If an applicant should request a hearing in accordance with paragraph (b)(4) of this section, an adjudicatory proceeding on the question of the applicant's fitness for registration shall thereafter be conducted and concluded in accordance with the Commission's Rules of Practice, 17 CFR Part 10; the matter shall be referred to the Chief Administrative Law Judge who shall set a date for hearing and assign an Administrative Law Judge to conduct the proceeding. For purposes of that proceeding, the notice given in accordance with paragraph (b) of this section shall be treated as a duly authorized complaint by the Division of Enforcement seeking, as relief, denial of the application for registration, and the request for hearing shall be treated as an answer which generally denies every allegation contained in the notice upon which a hearing has been requested: *Provided, however,* That (1) the Division of Enforcement may thereafter amend the complaint to seek such other and further relief as may be appropriate in view of the matters charged and, with leave of the Commission, may allege further grounds as a basis for denial of registration; and (2) the applicant may supplement his answer to set forth any affirmative defenses he may wish to assert and the alleged facts upon which those defenses are based. The provisions of §§ 10.22 and 10.23 of the Rules of Practice, concerning a complaint and answer, shall otherwise be inapplicable.

(d) If no request for a hearing is received by the Executive Director within thirty days after a notice has been given in accordance with paragraph (b) of this section, the Executive Director may proceed as follows:

(1) In the case of an applicant for an initial registration, pursuant to authority hereby delegated by the Commission, the Executive Director may determine the applicant's fitness for registration and may issue an order, pursuant to Section 8a(2) of the Commodity Exchange Act, granting or refusing registration to the applicant based upon the application, the notice with proof of service, and an appropriate showing that a hearing has not been requested.

(2) In the case of an applicant for renewal of a registration previously

granted, the Executive Director may transmit to the Chief Administrative Law Judge a true copy of the application, the notice with proof of service, and an appropriate showing that a hearing has not been requested, and, based thereon, the Chief Administrative Law Judge, pursuant to authority hereby delegated by the Commission, may determine the applicant's fitness for registration and may issue an order, pursuant to Section 8a(2) of the Commodity Exchange Act, granting or refusing registration to the applicant.

(e) Notwithstanding any other provision contained in this section, the Executive Director is hereby delegated authority pursuant to Section 8a(2)(A) of the Commodity Exchange Act to enter an order refusing to register any person if the prior registration of such person has been suspended (and the period of such suspension shall not have expired) or has been revoked.

(f) A copy of any order issued pursuant to paragraph (d) or (e) of this section shall promptly be served upon the applicant and the Division of Enforcement and provided to each member of the Commission. Within fifteen days after service upon an applicant of an order granting or refusing registration issued pursuant to paragraph (d) or (e) of this section, the applicant or the Division of Enforcement may file with the Commission's Secretariat a petition for reconsideration setting forth the grounds in support thereof. The petition of an applicant shall not be based upon any matter of which the applicant had notice and opportunity for hearing under paragraph (b) of this section unless it be claimed, and supported by affidavit, that notice under paragraph (b) of this section was not timely received by the applicant.

(g) An order granting or refusing registration issued pursuant to paragraph (d) or (e) of this section shall be effective as a final order of the Commission thirty days after the date it was served upon the applicant. Within that period the Commission, on its own motion, or based upon a petition filed pursuant to paragraph (f) of this section, may stay the effectiveness of the order and then or thereafter may reverse, affirm or modify the order or direct reconsideration of the order on such basis and in accordance with such procedures as it may determine.

(h)(1) The Director or Deputy Director of the Division of Trading and Markets shall give notice under paragraph (a) of this section only with the concurrence of the Director of the Division of Enforcement or his designee. The Executive Director shall give notice under paragraph (b) of this section only with the concurrence of the Director of the Division of Trading and Markets, the Director of the Division of Enforcement and the Deputy General Counsel, or their designees.

(2) For purposes of this section, notice to and service upon the applicant shall be sufficient if mailed first class properly addressed to the applicant at the address shown on his application or any amendment thereto, and shall be complete upon mailing; a record showing the date upon which a document was duly mailed, and by whom, prepared and retained in the normal course of Commission business, shall be adequate proof of service of the document. Documents submitted to the Executive Director or the Director of the Division of Trading and Markets shall be considered filed only upon actual receipt.

(i) The Commission reserves to itself the decision in any case whether to institute a proceeding to determine whether to refuse an applicant's registration for reasons other than the existence of circumstances described in paragraph (a)(1) of this section.

§ 3.21 Exemption from fingerprinting requirement in certain cases.

(a) Any person who is required by §§ 3.10, 3.11, 3.12, 3.13 or 3.14 to submit a fingerprint card may file, or cause to be filed, in lieu of such card, a legible, true, accurate and complete photocopy of:

(1) A fingerprint card which has been submitted to the Federal Bureau of Investigation for identification and appropriate processing, if such identification and processing has been completed satisfactorily by the Federal Bureau of Investigation not more than ninety days prior to the filing with the Commission of the photocopy; and

(2) Each report, record, and notation made available by the Federal Bureau of Investigation with respect to that fingerprint card.

(b) Each photocopy filed in accordance with this section must be signed and dated thereon. Such signature shall constitute a certification by that individual that the photocopy is true, accurate and complete and must be made by:

(1) *With respect to the fingerprints of an associated person:* An officer, if the futures commission merchant making the certifications required by § 3.12 is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship;

(2) *With respect to the fingerprints of a floor broker:* The applicant for registration; and

(3) *With respect to the fingerprints of a principal of a futures commission merchant, a commodity trading advisor, or a commodity pool operator:* An officer, if the futures commission merchant, commodity trading advisor or commodity pool operator is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship.

§ 3.22 Supplemental filings.

Notwithstanding any other provision of this chapter, the Commission or the Director of the Division of Trading and Markets or his designee, may, at any time, give written notice to any registrant, applicant for registration, or person required to be registered:

(a) That information has come to the attention of the Commission's staff which, if true, could constitute grounds upon which to base a determination that the person is unfit to become, or to remain, registered in accordance with the Act or the regulations thereunder and setting forth such information in the notice, or that the Commission has undertaken a routine or periodic review of the registrant's fitness to remain so registered; and

(b) That the person, or any individual who, based upon his relationship with that person is required to file a Form 8-R in accordance with the requirements of this part, as applicable, must, within five days of receipt thereof, or such shorter period of time as the Commission may specify, complete and file with the Commission a current Form 8-R, in accordance with the instructions thereto, which must be accompanied by that individual's fingerprints on fingerprint cards provided by the Commission for that purpose.

(c) Failure to provide the requested information is a violation of the Commission's regulations which itself constitutes grounds upon which to base a determination that the registrant is unfit to become or to remain so registered.

§§ 3.23-3.30 [Reserved]

§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.

(a) Each applicant or registrant as a futures commission merchant, commodity trading advisor or commodity pool operator shall file promptly with the Commission a statement on Form 3-R to correct any deficiency or inaccuracy in its application for registration, or any schedule or supplemental statement thereto, and to report any change which no longer renders accurate and current the information contained in any of the items on Form 7–R of such application or supplemental statement; or contained in any of the following items on Schedules A, B or C of Form 7–R:

(1) *With respect to a futures commission merchant.* The following items on Schedule A, "Application for Registration as Futures Commission Merchant":

Item 3—Correspondents and agents (excluding employees and associated persons) operating within the United States, authorized to solicit or accept orders in the name of the registrant;

Item 4—Commodity exchanges in the United States in which the registrant has membership privileges; and

Item 5—Participation in commodity option transactions by the registrant.

New domestic branch offices and new correspondents and agents who are operating within the United States and are authorized to solicit or accept orders on behalf of the futures commission merchant shall be reported promptly and fees shall be remitted as provided in § 3.3.

(2) *With respect to a commodity trading advisor.* The following items on Schedule B, "Application for Registration as Commodity Trading Advisor":

Item 4(a)—Manner of furnishing advisory services; and

Item 6—Ownership in, control or management authority over, or reciprocal business arrangements with futures commission merchants, agents of futures commission merchants, commodity pools, commodity pool operators, floor brokers, associated persons or other commodity trading advisors by the registrant or any persons named in Item 5 of Form 7–R.

(3) *With respect to a commodity pool operator.* The following items on Schedule C, "Application for Registration as Commodity Pool Operator":

Item 3—Name and form of organization of each pool operated by the registrant; and

Item 8—Ownership in, control or management authority over, or reciprocal business arrangements with, futures commission merchants or commodity trading advisors by the registrant or any persons named in Item 5 of Form 7–R.

(b) Each applicant or registrant as a floor broker or associated person and each principal of a futures commission merchant, commodity trading advisor or commodity pool operator must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in the Form 8–R or supplemental statement thereto which no longer renders accurate and current the information contained in the Form 8–R or supplemental statement. Each such correction must be made on Form 3–R and must be prepared and filed in accordance with the instructions contained therein.

(c)(1) After the filing of a Form 8–R or a Certificate of Special Registration (Form 8–S) by or on behalf of any person for the purpose of permitting that person to be an associated person of a futures commission merchant or its agent, that futures commission merchant must, within ten days after the occurrence of either of the following, file a notice thereof with the Commission indicating: (i) the failure of that person to become associated with the futures commission merchant or its agent and the reasons therefor; or (ii) the termination of the association of that person with the futures commission merchant or its agent and the reasons therefor.

(2) [Reserved]

(3) Any notice required by this paragraph (c) must be filed on Form 8–T or on a Uniform Termination Notice for Securities and Commodities Industry Registration.

§ 3.32 Changes requiring new registration.

A new registration is required in the event of a change:

(a) In the name of the registrant if the registrant is a futures commission merchant, a commodity pool operator or a commodity trading advisor;

(b) In the form of organization of the registrant;

(c) In the ownership of the business of the registrant in the case of a sole proprietorship; and

(d) In the personnel of a partnership resulting from the death, withdrawal, or addition of a partner: *Provided,* That if such change does not, as a matter of law, create a new partnership, it may be reported by the registrant to the Commission on Form 3–R within 10 days of the date of such change, and if so reported a new registration shall not be required.

Appendix A to Part 1 Redesignated as Appendix A to Part 3

6. Appendix A to 17 CFR Part 1 (Interpretative Statement Regarding Good Cause Standards for Denial of Registration) is redesignated as Appendix A to 17 CFR Part 3.

Issued in Washington, D.C. On October 30, 1980 by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 102

[Docket No. 80N–0140]

Common or Usual Names for Nonstandardized Foods; Diluted Fruit or Vegetable Juice Beverages

AGENCY: Food and Drug Administration.

ACTION: Reaffirmation of label requirements and extension of effective date.

SUMMARY: The Food and Drug Administration (FDA) is reaffirming its labeling requirement for percent declaration of individual juices in certain multi-juice beverages. The National Food Processors Association's (NFPA) petition for reconsideration in which it requested the rescission of this requirement is therefore denied. The grounds upon which the petitioner now relies were adequately considered by the Commissioner of Food and Drugs in promulgating the final rule. FDA was not persuaded then, nor is it persuaded now, that eliminating the percent declaration requirement of individual juices, when the individual juices are identified on the label or in labeling, is in the best interests of the consumer. However, FDA is extending the period of time for compliance with the labeling requirements of the common or usual name established for diluted fruit or vegetable juice beverages from July 1, 1981, to July 1, 1982, as requested by NFPA in order that an orderly disposal of label inventories can be made.

EFFECTIVE DATE: Effective July 1, 1982, for all affected products initially introduced or initially delivered for introduction into interstate commerce.

FOR FURTHER INFORMATION CONTACT: Howard N. Pippin, Bureau of Foods (HFF–312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–3092.

SUPPLEMENTARY INFORMATION: NFPA submitted to FDA a petition for reconsideration, dated July 10, 10980, in which it requested rescission of the requirement for declaration of each individual juice referred to on the label or in labeling for a multi-juice beverage. NFPA also requested an extension of the effective date for the final regulation from July 1, 1981 to July 1, 1982, so that there would be sufficient time to use up their existing label inventories.

NFPA asserts that § 102.33(a)(2)(ii) (21 CFR 102.33(a)(2)(ii)), which was established by final rule published in the

Federal Register of June 10, 1980 (45 FR 39247), should be rescinded because requiring the percentage of both the total juice and each individual juice referred to on the label or in labeling is redundant and would create unnecessary label overcrowding, reduce formulation flexibility, compel disclosure of trade secrets, and result in misleading declarations of individual juice percentage, e.g., "a multi-juice beverage containing nine percent pineapple juice, eight percent grapefruit juice, and eight percent guava juice would be required to bear a declaration of twenty-five percent fruit juice on the label." However, NFPA points out that "because § 102.33(a)(2)(ii) provides for the declaration of the percent of individual juices in five percent increments, rounded to the next lowest multiple of five, the principal display panel (PDP) of this product also would be required to bear a declaration of five percent pineapple juice, five percent grapefruit juice, and five percent guava juice. The large discrepancy between the total juice declaration (i.e., 25 percent) and the sum of the individual juice declaration (i.e., 15 percent) would create substantial consumer confusion. Moreover, for multi-juice beverages containing less than five percent of several kinds of juices, the required disclosures of this fact on the PDP would be of little, if any, value to consumers." In fact, NFPA states that, "as FDA recognized in the preamble to the proposed regulation, the overriding consumer interest is in the total juice content of any diluted juice beverage" and "FDA has failed to show that there is any consumer interest in a declaration of the percentage of both total juice and of individual juices in a multi-juice beverage for which references to the individual juices are contained on the label or in labeling."

In accordance with § 10.33 (21 CFR 10.33), FDA has reviewed the administrative record in regard to the labeling requirements set forth in § 102.33(a)(2)(ii) in light of the aforementioned objections raised by NFPA in its petition for reconsideration, and concludes that the Commissioner, in promulgating the final regulation, adequately considered the grounds upon which the petitioner now relies. FDA recognized, in promulgating this regulation, that dual declaration of both the total juice content and the individual juice content when referred to on the label or in labeling could lead to possible confusion among consumers, create the possibility of some label overcrowding, reduce formulation flexibility, and, in some instances, compel declaration of trade secrets. However, it was the contention of the agency then, and still is, that when the individual juices are identified on the label in some manner other than in the ingredient statement, it would be even more confusing to the consumer not to require the dual declaration because any statement less definitive than the percent of each identified juice denies the consumer the right to comparison buying and may be misleading as to the actual content of the individual juices in the drink. The consumer has a right to know the approximate amount of each of the identified juices in the drinks. For example, a multi-juice drink label may picture several fruits but in fact contain one in a significantly larger or smaller amount than all the others. For such a product, a declaration of only the total juice content would not inform the consumer of the predominance of any one of the pictured fruits, thus leading to the assumption that all of the fruits pictured are contained in approximately equal proportions.

Because of the possibility of deception, a total juice declaration alone is not adequate to fully inform consumers of the juice content of those multi-juice beverages which make some type of identity claim, other than in the ingredient statement, for the juices contained in the multi-juice drink. Therefore, after reconsidering and reviewing the labeling requirements of § 102.33(a)(2)(ii) for multi-juice diluted beverages, FDA is reaffirming the final regulation as published in the **Federal Register** of June 10, 1980 (45 FR 39247).

FDA reminds manufacturers that they are not in any way required to identify individual juices on their labels other than in the ingredient statement. Hovever, should they choose to do so, the total juice declaration may be the sum of the rounded down individual juices, thus eliminating any apparent discrepancy caused by the requirement for dual declaration of percent total and individually identified juices. Alternatively, the multi-juice producers may wish to reformulate their products to adjust the levels of individual juice content in such a manner that any discrepancy between the total amount of juice used and the sum of the rounded down individual precentages is eliminated. The resulting label declaration will not be misleading to the consumer, nor will it be deceptive since, in either case, the juice content will be at least the amount declared.

FDA advises that there is nothing in the final regulation which prevents the producer from representing on the label only one or two of the individual juices (where there are three or more) that are present in the beverages. The effect of this is to require, in addition to the total percentage, the percent declaration of only those fruits that are depicted, represented, or highlighted on the label. This would allow the producers of multi-juice products an opportunity to better protect trade secrets, lessen the problem of PDP overcrowding, and allow better formulation flexibility.

As mentioned earlier in the preamble, NFPA also requested an extension of the effective date for compliance with the regulation from July 1, 1981 to July 1, 1982. NFPA contends that, while many manufacturers already declare the total percent juice on their labels, the additional requirement of individual juice percentages for multi-juice beverages will require extensive label revisions. Further, NFPA states that many producers, especially private label producers, currently have larger than 12-month label inventories. Therefore, the extension of the effective date for 1 year would provide sufficient time for an orderly use of the current label inventories, without requiring expensive destruction of existing inventories.

FDA agrees that an extension of the effective date for 1 year is needed to avoid costly destruction of existing label inventories that would result in higher costs to the consumers and therefore would not be in their best interest.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403, 701(a), 52 Stat. 1041 as amended, 1047–1048 as amended, 1055 (21 U.S.C. 321(n), 343, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), the effective date for compliance with the labeling requirements of the common or usual name for diluted fruit or vegetable juice beverages is extended from July 1, 1981, to July 1, 1982, as follows: All affected diluted fruit or vegetable juice beverages initially introduced or initially delivered for introduction into interstate commerce after July 1, 1982, shall comply with 21 CFR 102.33 (45 FR 39247; June 10, 1980).

Elsewhere in this issue of the Federal **Register**, FDA is confirming the revocation of the stayed standards of identity for limeade and canned pineapple-grapefruit juice drink and announcing that the stays of the effective dates for the standards of identity for cranberry juice cocktail, artificially sweetened cranberry juice cocktail, lemonade, and colored lemonade remain in effect. Therefore, these products are nonstandardized foods and are subject to 21 CFR 102.33 (45 FR 39247; June 10, 1980) and this extension of effective date.

Dated: November 26, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

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21 CFR Part 146

[Docket No. 78N-0242]

Canned Fruit Juices; Standards of Identity for Cranberry Juice Cocktail, Artificially Sweetened Cranberry Juice Cocktail, Lemonade, Colored Lemonade, Limeade and Canned Pineapple-Grapefruit Juice Drink; Confirmation and Stay of Effective Dates of Revocation of Certain Stayed Regulations

AGENCY: Food and Drug Administration.

ACTION: Confirmation and stay of effective dates of revocation of certain stayed regulations.

SUMMARY: The Food and Drug Administration (FDA) confirms the effective date of the revocation of the stayed standards of identity for limeade and canned pineapple-grapefruit juice drink and stays the effective date for the revocation of the stayed standards of identity for cranberry juice cocktail, artificially sweetened cranberry juice cocktail, lemonade, and colored lemonade pending resolution of issues raised by objections. The stay of the standards of identity for cranberry juice cocktail, artificially sweetened cranberry juice cocktail, lemonade, and colored lemonade remains in effect pending a decision regarding the need for a hearing. A notice specifying any issues on which a hearing is justified and other pertinent information will be published in the **Federal Register** at a later date.

DATES: The revocation of the stayed standards of identity for limeade and canned pineapple-grapefruit juice drink became effective July 11, 1980. The stay of the effective date of the revocation of the stayed standards of identity for cranberry juice cocktail, artificially sweetened cranberry juice cocktail, lemonade, and colored lemonade is effective December 5, 1980.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: A final regulation establishing standards of identity for cranberry juice cocktail and artificially sweetened cranberry juice cocktail was published in the **Federal Register** of April 11, 1968 (33 FR 5617). In addition, a final regulation establishing standards of identity for lemonade, colored lemonade, limeade, and canned pineapple-grapefruit juice drink was published in the **Federal Register** of May 7, 1968 (33 FR 6862). Both final regulations were stayed in their entirety in response to objections. The stay of the final regulation for cranberry juice cocktail beverages was published in the **Federal Register** of July 13, 1968 (33 FR 10088), and the stay of the final regulation for the remaining diluted beverages was published in the **Federal Register** of July 27, 1968 (33 FR 10713).

FDA issued in the **Federal Register** of June 10, 1980 (45 FR 39247) a final regulation establishing a common or usual name for diluted fruit or vegetable juice beverages, other than diluted orange juice beverages (21 CFR 102.33). The basis for this common or usual name regulation was to enable consumers to make a value comparison among beverages at the time of purchase and thereby reduce the consumer confusion that exists in connection with diluted juice beverages. Therefore, in the **Federal Register** of June 10, 1980 (45 FR 39251), FDA revoked the stayed standards of identity for the following diluted fruit juice beverages: cranberry juice cocktail (21 CFR 146.110), artificially sweetened cranberry juice cocktail (21 CFR 146.111), lemonade (21 CFR 146.115), colored lemonade (21 CFR 146.125), limeade (21 CFR 146.130), and canned pineapple-grapefruit juice drink (21 CFR 146.133).

The order revoking the stayed regulations provided that any person who would be adversely affected could, on or before July 10, 1980, file written objections to the revocation and, if desired, request a hearing on the specific provisions to which there were objections. No objections or requests for a hearing were received regarding the revocation of the stayed standards of identity for limeade and canned pineapple-grapefruit juice drink.

Objections and Requests for a Hearing

Objections and requests for a hearing were filed relative to the revocation of the standards of identity for cranberry juice cocktail (§ 146.110), lemonade (§ 146.115), and colored lemonade (§ 146.125). While no specific objections were received to the revocation of the stayed standards of identity for artificially sweetened cranberry juice cocktail, FDA is of the opinion that the objections to the revocation of the stayed standard of identity for cranberry juice cocktail are applicable. The objections and requests for a hearing are as follows:

Cranberry Juice Cocktail

One letter of objection and request for a hearing objected on the grounds that the determination by FDA that establishment of a standard of identity for cranberry juice cocktail would "promote honesty and fair dealing in the interest of consumers" may not now be withdrawn on the unsupported assertion that the common or usual name regulation "reduce(s) * * * consumer confusion." The objection contended that in originally proposing the standard of identity for cranberry juice cocktail, FDA recognized that the high natural acid content of cranberries distinguished the juice drink made from cranberries from most other fruit juices and that the establishment of a standard of identity was an appropriate method to take this high natural acid content into account while still protecting the interest of consumers.

Lemonade and Colored Lemonade

One letter of objection and request for a hearing objected to the revocation of the stayed lemonade and colored lemonade standards on the grounds that the common or usual name regulation for diluted fruit or vegetable juice beverages, § 102.33, will not enable consumers to make value comparisons among the various products that would be allowed to be called lemonade. Further, the common or usual name regulation, rather than lessen consumer confusion as to what lemonade is, would increase consumer confusion, and would destroy the common understanding of lemonade that has built up over the past three decades. The objection maintains that consumers understand that lemonade is a mixture of water, lemon juice, and sugar and that nothing indicates that they expect the acidity to come from any source other than the lemon juice in the product. Further, it maintains that the consumers have come to expect the lemon taste that is achieved when 13 percent lemon juice is present. The stayed standards of identity for lemonade and colored lemonade require that the acidity be derived only from lemon juice and that the proportion of lemon juice used be sufficient to yield an acidity, calculated as anhydrous citrus acid, of not less than 0.70 gram per 100 milliliters of the finished beverage, equivalent to approximately 13 percent lemon juice. The objection maintains that the common or usual name regulation would permit citric acid and lemon flavoring, natural or artificial, to be used to produce beverages that taste