

Commodity Futures Trading Commission**§ 1.48**

fall within the scope of those described in section 1.3(z)(1) of the regulations;

(4) Include a statement concerning the maximum size of positions for future delivery (both long and short) which will be acquired any time during the next fiscal year or marketing season of the person filing or on whose behalf the filing is made.

(5) In addition: statements filed by an agent, concerning a futures position which would offset a cash position which the agent does not own or has not contracted to buy or sell, shall contain information describing all contractual arrangements between the agent filing and the person who owns the commodity or holds the cash market commitment being offset;

(6) Statements concerning futures positions to be acquired against unsold anticipated production or unfilled anticipated requirements for manufacturing, processing or feeding shall also include the information required under § 1.48 of the regulations.

(c) *Supplemental reports.* Whenever the purchases or sales which a person wishes to classify as bona fide hedging shall exceed the amount provided in the person's most recent filing pursuant to this section or the amount previously specified by the Commission pursuant to paragraph (a) of this section, such person shall file with the Commission a statement which updates the information provided in the person's most recent filing and provides the reasons for this change at least ten days in advance of the date that person wishes to exceed those amounts.

(d) *Maximum purchases and sales.* Purchases and sales for future delivery considered bona fide hedging pursuant to § 1.3(z)(3) of the regulations shall at no time exceed the lesser of:

(1) The value fluctuation equivalent (in terms of the commodity for future delivery) of the current cash position described in the information most recently filed pursuant to this section, or

(2) The maximum level of long or short open positions provided in the information most recently filed pursuant to this section or most recently specified by the Commission pursuant to paragraph (a) of this section.

(e) *Updated reports.* Reports updating the information required pursuant to

this section also shall be filed with the Commission upon specific request.

(Approved by the Office of Management and Budget under control number 3038-0013)

[42 FR 42751, Aug. 8, 1977, as amended at 46 FR 63035, Dec. 30, 1981]

§ 1.48 Requirements for classification of sales or purchases for future delivery as bona fide hedging of unsold anticipated production or unfilled anticipated requirements under § 1.3(z)(2) (i)(B) or (ii)(C) of the regulations.

(a) Any person who wishes to avail himself of the provisions of § 1.3(z)(2) (i)(B) or (ii)(C) of the regulations and to make sales or purchases for future delivery in any commodity in excess of trading and position limits then in effect pursuant to section 4a of the Act for the purposes of bona fide hedging shall file statements with the Commission in conformity with the requirements of this section. All or a specified portion of the unsold anticipated production or unfilled anticipated requirements described in these statements shall not be considered as offsetting positions for bona fide hedging transactions and positions if such person is so notified by the Commission within ten days after the Commission is furnished with the information required under paragraphs (b) or (c) of this section. The Commission may request the person notified to file specific additional information with the Commission to support a determination that the statement filed accurately reflects unsold anticipated production or unfilled anticipated requirements for manufacturing, processing or feeding. In such cases, the Commission shall consider all additional information so filed and, by notice to such person, shall specify its determination as to what portion of the production or requirements described constitutes unsold anticipated production or unfilled anticipated requirements for the purposes of bona fide hedging. In no case shall such transactions and positions which offset unsold anticipated production or unfilled anticipated requirements be considered bona fide hedging if they exceed the levels specified in paragraph (d) of this section of the regulations.

§ 1.48

17 CFR Ch. I (4-1-11 Edition)

(b) *Initial statement.* Initial statements concerning the classification of transactions and positions as bona fide hedging pursuant to §1.3(z)(2) (i)(B) or (ii)(C) shall be filed with the Commission at least ten days in advance of the date that such transactions or positions would be in excess of limits then in effect pursuant to section 4a of the Act. Such statements shall set forth in detail for a specified operating period not in excess of one year the person's unsold anticipated production or unfilled anticipated requirements for processing or manufacturing or feeding and explain the method of determination thereof, including, but not limited to, the following information:

(1) For unsold anticipated production:

(i) Annual production of such commodity for the three complete fiscal years preceding the current fiscal year;

(ii) Anticipated production of such commodity for a specified period not in excess of one year;

(iii) Fixed-price forward sales of such commodity;

(iv) Unsold anticipated production of such commodity for a specified period not in excess of one year.

(2) For unfilled anticipated requirements:

(i) Annual requirements of such commodity for processing or manufacturing or feeding for the three complete fiscal years preceding the current fiscal year;

(ii) Anticipated requirements of such commodity for processing or manufacturing or feeding for a specified operating period not in excess of one year;

(iii) Inventory and fixed-price forward purchases of such commodity, including any quantity in process of manufacture and finished goods and byproducts of manufacture or processing (in terms of such commodity);

(iv) Unfilled anticipated requirements of such commodity for processing or manufacturing or feedings for a specified operating period not in excess of one year.

(3) Additional information: Persons hedging unsold anticipated production or unfilled anticipated requirements which are not the same quantity or are not the same commodity as the commodity to be sold or purchased for fu-

ture delivery shall furnish this information both in terms of the actual commodity produced or used and in terms of the commodity to be sold or purchased for future delivery. In addition, such persons shall explain the method for determining the ratio of conversion between the amount of the actual unsold anticipated production or unfilled anticipated requirements and the amount of commodity to be sold or purchased for future delivery. Persons hedging unfilled annual feeding requirements for livestock and poultry shall provide the number of cattle, hogs, sheep, or poultry expected to be fed during the specified period, not to exceed one year, and the derivation of their annual requirements based upon these numbers. Persons filing as an agent shall furnish this information on the basis of the fiscal or operating year of the person on whose behalf the filing is made.

(c) *Supplemental reports.* Whenever the sales or purchases which a person wishes to consider as bona fide hedging of unsold anticipated production or unfilled anticipated requirements shall exceed the amounts described by the figures for requirements furnished in the most recent filing pursuant to this section or the amounts determined by the Commission to constitute unsold anticipated production or unfilled anticipated requirements pursuant to paragraph (a) of this section, such person shall file with the Commission a statement which updates the information provided in the person's most recent filing and supplies the reason for this change at least ten days in advance of the date that person wishes to exceed these amounts.

(d) *Maximum sales and purchases.* Sales or purchases for future delivery considered as bona fide hedges pursuant to §1.3(z)(2) (i)(B) or (ii)(C) shall at no time exceed the lesser of:

(1) A person's unsold anticipated production of unfilled anticipated requirements as described by the information must recently filed pursuant to this section or determined by the Commission pursuant to paragraph (a) of this section; or

(2) A person's actual unsold anticipated production or current unfilled anticipated requirements for the

Commodity Futures Trading Commission**§ 1.49**

length of time specified in the information most recently filed pursuant to this section.

(e) *Updated reports.* Reports updating the information required pursuant to this section shall also be filed with the Commission upon specific request.

(Approved by the Office of Management and Budget under control number 3038-0013)

[42 FR 42752, Aug. 8, 1977, as amended at 46 FR 63035, Dec. 30, 1981]

§ 1.49 Denomination of customer funds and location of depositories.

(a) *Definitions.* For purposes of this section:

(1) *Money center country.* This term means Canada, France, Italy, Germany, Japan, and the United Kingdom.

(2) *Money center currency.* This term means the currency of any money center country and the Euro.

(b) *Permissible denominations of obligations.* (1) Subject to the terms and conditions set forth in this section, a futures commission merchant's obligations to a customer shall be denominated:

(i) In the United States dollar;

(ii) In a currency in which funds were deposited by the customer or were converted at the request of the customer, to the extent of such deposits and conversions; or

(iii) In a currency in which funds have accrued to the customer as a result of trading conducted on a designated contract market or registered derivatives transaction execution facility, to the extent of such accruals.

(2)(i) A futures commission merchant shall prepare and maintain a written record of each transaction converting customer funds from one currency to another.

(ii) A written record prepared under paragraph (b)(2)(i) of this section must include the date the transaction was executed, the currencies converted, the amount converted, and the resulting amount.

(iii) The information required under paragraph (b)(2)(ii) of this section must be provided to the customer upon the customer's request.

(c) *Permissible locations of depositories.* (1) Unless a customer provides instructions to the contrary, a futures commission merchant or a derivatives

clearing organization may hold customer funds:

- (i) In the United States;
- (ii) In a money center country; or
- (iii) In the country of origin of the currency.

(2) A futures commission merchant or derivatives clearing organization may hold customer funds outside the United States, in a jurisdiction that is not a money center country, or the country of origin of the currency only to the extent authorized by the customer, *provided*, that the futures commission merchant or derivatives clearing organization must make and maintain a written record of such authorization. Notwithstanding the foregoing, in no event shall a futures commission merchant or a derivatives clearing organization hold customer funds in a restricted country subject to sanctions by the Office of Foreign Assets Control of the U.S. Department of Treasury.

(d) *Qualifications for depositories.* (1) To hold customer funds required to be segregated pursuant to the Act and §§ 1.20 through 1.30, 1.32 and 1.36, a depository must provide the depositing futures commission merchant or derivatives clearing organization with the appropriate written acknowledgment as required under §§ 1.20 and 1.26.

(2) A depository, if located in the United States, must be:

- (i) A bank or trust company;
- (ii) A futures commission merchant registered as such with the Commission; or

(iii) A derivatives clearing organization.

(3) A depository, if located outside the United States, must be:

- (i) A bank or trust company;
- (A) That has in excess of \$1 billion of regulatory capital; or

(B) Whose commercial paper or long-term debt instrument or, if a part of a holding company system, its holding company's commercial paper or long-term debt instrument, is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization;

(ii) A futures commission merchant that is registered as such with the Commission; or

(iii) A derivatives clearing organization.