Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on July 16, 2003.

Issued in Renton, Washington, on May 30, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14274 Filed 6–10–03; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB93

Account Identification for Eligible Bunched Orders

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is amending Commission Rule 1.35(a–1)(5) (''Rule 1.35(a–1)''), which allows certain account managers to bunch customer orders for execution and to allocate them to individual accounts at the end of the day. The amended rule will expand the availability of bunching to all customers, simplify the process and clarify the respective responsibilities of account managers and futures commission merchants (''FCMs'').

EFFECTIVE DATE: July 11, 2003.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Deputy Director, or R. Trabue Bland, Attorney-Advisor, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5430. Email: *lpatent@cftc.gov.* or *tbland@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Commission Rule 1.35(a–1), in effect since August 27, 1998 has allowed bunched orders for eligible customers to be placed on a contract market without specific customer account identification either at the time of order placement or at the time of report of execution. Rule 1.35(a–1) has limited post-execution allocation of bunched orders to sophisticated customers and required eligible account managers [1] to make certain disclosures regarding the allocation methodology, the standard of fairness of allocations, composite or summary data of the trades, and whether the account manager has any interest in the bunched order.

In December 2000, the Commodity Futures Modernization Act (''CFMA'') was enacted. One of the mandates of the CFMA was for the Commission to review its rules relating to intermediaries with an eye to identifying areas where greater flexibility might be warranted. Since the enactment of the CFMA, numerous industry participants have stated to Commission staff that the regulations related to bunched orders needed to be revisited for a number of reasons and the Commission so reported to Congress in its Intermediaries Study in June 2002.

For example, enhancements in technology have made it easier for account managers to enter orders directly, thereby making certain aspects of the current requirements less workable. In addition, many account managers use ''give-up'' agreements and multiple FCMs for clearing and execution. Thus, while the current rule requires that an account manager identify eligible customer accounts to which fills will be allocated before placing an order eligible for post-execution allocation, FCMs may not know that an order has been executed for a particular client until that order has been executed and cleared.[2] Account managers and FCMs have also commented that their responsibilities under the current rule are unclear, especially their respective recordkeeping responsibilities. Therefore, as markets become more global in scope, account managers, both domestic and foreign, and FCMs have claimed that the current bunched order requirements serve as a disincentive to using U.S. futures markets.

On February 2, 2001, the National Futures Association (''NFA'') and the Futures Industry Institute issued an industry-wide study of issues associated with order transmission and order entry process by commodity professionals (''Best Practices Study'').[3] The study reported that, although the current rule increased flexibility over previously applicable requirements, many commenters in the study felt that the current rule caused ''unnecessary processing delays without adding customer protections that otherwise could be realized through equally effective, less costly procedures.''[4]

Based upon the foregoing, on March 14, 2003, the Commission published the proposed amendments to Rule 1.35(a–1).[5] The Commission received twenty-five comments on the proposed rule. The commenters included ten FCMs [6], four exchanges [7], two industry associations [8], one commodity trading advisor (''CTA'') [9], seven individuals [10] and NFA. The FCMs, exchanges, industry associations, NFA and the CTA supported the amendments to the rule, generally stating that the essential customer protections would be retained while clarifying the responsibilities of FCMs and account managers. Six individuals submitted comments expressing concern over the possible unfair allocation by account managers. One commenter submitted comments expressing concern over the Commission's ability to monitor for unfair allocation under the amended rule. These comments are discussed fully below.

II. Final Rules

A. Eligible Customers

The current rule limits the post-execution allocation of bunched orders to ''eligible customers,'' who, in essence, are sophisticated customers. In its comment, NFA noted that ''[a]ll customers deserve to have their orders filled efficiently and at the most favorable terms under the circumstances.'' The NFA and other commenters expressed the view that bunched orders can meet these objectives because bunched orders can provide better pricing and execution of orders. The Commission agrees; accordingly, as proposed, the amendments to Rule 1.35(a–1)(5) will expand eligibility to all customers who

[1] The term account manager as used herein includes commodity trading advisors, investment advisers and other persons identified in the revised regulation, who would place orders and direct the allocation in accordance with the procedures set forth in the revised rule.

[2] 17 CFR Part 1, Appendix C (2002), 62 FR 25470 (May 8, 1997).

[3] National Futures Association & Futures Industry Institute, Recommendations for Best Practices in Order Entry and Transmission of Exchange Traded Futures and Options Transactions (2001).

[4] *Id.* at 25.

[5] 68 FR 12319 (March 14, 2003).

[6] ABN AMRO, Inc., Bear Stearns & Co., Carr Futures, Inc., Credit Suisse First Boston, Fimat USA, Inc., Goldman Sachs & Co., J.P. Morgan Futures Inc., Lehman Brothers, Morgan Stanley & Co., and Prudential Securities Inc.

[7] The New York Board of Trade, Chicago Board of Trade, Chicago Mercantile Exchange, and the New York Mercantile Exchange.

[8] Futures Industry Association (''FIA'') and the Managed Funds Association (''MFA'').

[9] John Henry & Company, Inc.

[10] One commenter, Paul H. Bjarnason, Jr., is a former Commission employee. Six other individual commenters submitted identical letters.

provide written investment discretion to account managers.[11]

In the proposal, the Commission requested comment on whether it should retain an interpretive notice currently found at Appendix C to Part 1.[12] Appendix C allows CTAs to bunch orders if they prefile their allocation procedures with a clearing member, NFA, or an exchange. As the Commission noted in the proposal, Appendix C may prove unnecessary given the amended rule. One commenter, FIA, stated that the Commission should make clear that the amended rule supercedes any NFA interpretive notices or Commission rules to the extent they are inconsistent. The Commission notes that Appendix C governs the allocation of bunched orders pursuant to a pre-filed or contemporaneously-filed allocation scheme as opposed to the amended Rule, which governs the post-execution allocation of bunched orders. However, if any conflict between the two rules arises, the standards set forth in this rule supercede any interpretive guidance on bunched orders issued by the Commission. The Commission will retain Appendix C as guidance to account managers who may wish to allocate orders under the circumstances described therein and as an example of permissible allocation methods, but may reconsider this issue in the future.

B. Eligible Account Managers

Current rule 1.35(a–1) includes as eligible account managers registered CTAs and Investment Advisers (''IAs''), banks, insurance companies, trust companies, and savings and loan associations. Rule 1.35(a–1), as amended, expands the class of account managers permitted to bunch orders.[13] Generally, the Commission and the Securities and Exchange Commission exempt certain CTAs and IAs from registration or other regulatory requirements if they exclusively service certain sophisticated customers.[14] The Commission believes that post-execution allocation should be expanded to these entities. The amended rule expands the list of eligible account managers to include CTAs and IAs who are exempt from registration, or are excluded from the definition of CTA or IA by operation of law or rule. In addition, the amended rule allows foreign advisors, who exercise discretionary trading authority over the accounts of non-United States persons, to be eligible account managers regardless of whether the foreign advisor has been granted an exemption pursuant to Rule 30.10.[15]

As noted in the proposal, the amended rule does not apply to associated persons or introducing brokers exempt from Commission registration as CTAs pursuant to Rule 4.14(a)(3) and (6).[16] As also noted in the proposed rule, the Commission will retain antifraud and antimanipulation authority over account managers who are exempt from registration. The Commission notes that foreign advisers would be foreign brokers or foreign traders subject to Commission Rule 15.05, which makes the FCMs through which foreign advisers make or cause to be made trades the agents of the foreign advisers for purposes of communications from the Commission.[17]

C. Information

The Commission has converted the disclosure requirement of Rule 1.35(a–1) to an information availability requirement. Under the amended rule, account managers are required to make the following information available to customers upon request: (1) The general nature of the allocation methodology the account manager uses; and (2) summary or composite data sufficient for that customer to compare its results with those of other relevant customers and, if applicable, any account in which the account manager has an interest. In addition, the Commission has added a requirement that account managers make available information on whether accounts in which the account manager may have any interest may be included with customer accounts in bunched orders eligible for post-execution allocation.[18]

One commenter, John Henry & Company, suggested that the amended rule clarify the definition of ''results'' to include only the result of executions and allocations as opposed to a broader measure such as account performance results. The Commission agrees. Therefore, under the amended Rule 1.35(a–1), account managers must only make available the results of executions and allocations to comply with Rule 1.35(a–1)(5)(ii)(C).

D. Allocation

The amended rule clarifies the allocation procedures for post-execution allocation of bunched orders. In particular, the rule makes clear that the Commission will examine allocation fairness over time, rather than trade-by-trade.

The amended rule requires that account managers observe three requirements when allocating post-execution. First, pursuant to Rule 1.35(a–1)(5)(iii)(A), allocations must be fair and equitable. No account or group of accounts may receive consistently favorable or unfavorable treatment. Second, to determine whether the account manager is allocating fills fairly, the amended rule mandates that account managers use an allocation methodology sufficiently objective and specific to permit independent verification of the fairness of the allocation.[19] The final rule permits the account manager to exercise discretion over the allocation methodology, recognizing that allocation strategies may need to vary in order to treat all customers fairly. However, the Commission must be able to reconstruct the allocation methodology sufficiently to verify that the account manager is acting without bias.

One commenter, Paul H. Bjarnason, Jr., expressed concern that the amended rule may allow biased allocations by unscrupulous account managers. To combat biased allocations, Mr. Bjarnason recommended that the amended rule define allocation bias and require measurement of it with an

[11] Rule 1.35(a–1)(5) and NFA Compliance Rule 2–8(a), require that grants of discretionary authority to account controllers be in writing.

[12] 17 CFR Part 1, Appendix C (2002), 62 FR 25470 (May 8, 1997).

[13] In the proposal, the Commission requested comment on whether it was appropriate to expand the list of eligible account managers. All comments received on this issue supported the expansion of eligible account managers.

[14] Another Commission rule proposal would expand the number of entities that are exempt from CTA registration. See, 68 FR 12622 (March 17, 2003).

[15] 17 CFR 30.10 (2002). Rule 30.10 permits any person to petition for an exemption from certain of the Commission's Part 30 rules, which govern foreign futures and option trading by persons located in the United States. Commission orders issued pursuant to Rule 30.10 permit firms, among other things, to solicit and accept orders for foreign futures and option contracts from United States customers without registering under the Commodity Exchange Act, based upon substituted compliance with the rules and regulations of the jurisdiction in which the firm is located.

[16] 17 CFR 4.14(a)(3) (2002), 17 CFR 4.14(a)(6) (2002).

[17] See 17 CFR 15.00(e) and 17 CFR 15.05 (2002).

[18] In the proposal, the Commission requested comment on whether the information availability requirement was sufficient to inform customers. All comments received on this issue supported the information availability requirement.

[19] Appendix C of Part 1 contains examples of allocation methods. See, 17 CFR Part 1, Appendix C (2002), 62 FR 25470 (May 8, 1997). As noted in Appendix C, ''the appropriateness of any particular method for allocating split and partial fills depends on the CTA's overall trading approach. For example, a daily rotation of accounts may satisfy the general standards for CTAs who trade on a daily basis but inappropriate for CTAs who trade less frequently.''

appropriate accounting system. In addition, Mr. Bjarnason suggested that the amended rule require account managers to track for bias in their trade allocations.

As noted above, the Commission mandates that allocations be fair and equitable. The Commission agrees that account managers should diligently monitor for bias in their trade allocations and notes that NFA, in its interpretive notices, provides guidance on the type of allocation methodologies designed to provide non-preferential treatment.[20] In its comment letter, NFA notes that it will amend its interpretive notices regarding bunched orders, but will retain the requirement that CTAs use an allocation methodology designed to provide non-preferential treatment for all accounts.[21] Thus, given that NFA will be retaining this requirement, the Commission believes that it is unnecessary to modify the rule to define allocation bias further.

The third requirement that account managers must observe under the amended rule is to provide information to FCMs no later than a time sufficiently before the end of the day the order is executed to ensure that clearing records identify the ultimate customer for each trade. FIA, in its comment, noted a discrepancy in the proposing release. FIA noted that the preamble to the proposed rule stated that account managers must provide allocation information to FCMs in a time sufficiently before the end of the ''trading session,'' although the proposed rule text stated that account managers must provide allocation information sufficiently before the end of the ''trading day.'' In response, the Commission wishes to make clear that account managers must provide allocation information to FCMs before the end of the trading day during which the order is executed.

As noted above, the amended rule clarifies the respective responsibilities of account managers and FCMs.[22] Account managers are responsible for the allocation of bunched orders, not FCMs. Comments submitted by FCMs stated that the proposed amendments accurately reflect today's increasing use of electronic order entry systems. As Goldman Sachs noted in its comment, ''[t]he wide use of give-up arrangements means that an account manager's transactions on behalf of its clients frequently are executed through one FCM and later cleared through several different FCMs * * *. An FCM, therefore may have no reason to know that an order has been executed for a client's account until the transaction has been executed and cleared.''

All FCMs will continue to have responsibility to monitor for unusual account activity. As noted in the proposed release, an interpretive notice accompanying NFA Compliance Rule 2–10, states that ''[t]he FCM has certain basic duties to its customers, including the duty to supervise its own activities in a way designed to ensure that it treats its customers fairly. Specifically, an FCM would violate this duty if it has actual or constructive notice that allocations for its customers may be fraudulent and fails to take appropriate action. An FCM with such notice must make a reasonable inquiry into the matter and, if appropriate, refer the matter to the proper regulatory authorities.'' [23]

Under the amended rule, account managers have a responsibility to allocate trades fairly and equitably and FCMs must monitor account managers for unusual account activity. Paul H. Bjarnason, Jr., in his comment, expressed concern that, although account managers and FCMs have a duty to ensure that customers receive fair treatment, the amended rule may not prescribe sufficient oversight of allocations. Mr. Bjarnason suggests that account managers submit allocation reports to NFA and that NFA provide adequate audits of trade allocations. In response, as explained below, the Commission will require that account managers keep records sufficient to demonstrate that all allocations are fair and equitable and that the allocation methodology used by the account manager is objective. These records will be available to the Commission and other appropriate regulatory agencies. Customers will also have access to this information as well. In addition, the Commission notes that NFA schedules CTA audits using a risk-based auditing system that incorporates a regular auditing cycle. In its comment, NFA stated that any complaint involving fraudulent allocations would result in an immediate examination of any account manager registered with the Commission as a CTA. Therefore, given the recordkeeping requirements of the amended rule and NFA oversight, the Commission has determined to adopt the provision as proposed.

E. Records

Amended Rule 1.35(a–1)(5)(vi) requires that account managers keep two types of records. First, account managers must keep records of information maintained pursuant to amended Rule 1.35(a–1)(5)(ii). Second, account managers must make records available that allow independent verification of the fairness of the account manager's allocation methodology as required in Rule 1.35(a–1)(5)(iii). The records kept pursuant to amended Rule 1.35(a–1)(5)(iv) must be made available to any representative of the Commission, the United States Department of Justice, or other appropriate regulatory body.

The amended rule contains a provision to address cases in which account managers fail to provide the Commission with the information requested pursuant to amended Rule 1.35(a–1)(5)(iv)(A) or (B). Specifically, the Commission may prohibit the account manager from submitting orders for execution on designated contract markets and prohibit FCMs from accepting orders from such account managers. Commission action under this provision would not require prior notice and hearing. The failure of an account manager to respond to a request for information under this rule would be sufficient to trigger the prohibition. Any account manager that believes he or she is adversely affected by this process may use the procedures outlined in Rule 21.03(g).[24] Any prohibitions imposed pursuant to this Rule 1.35(a–1)(5)(iv)(D) would be without prejudice to any other remedies the Commission or any other regulatory body may have against the account manager in question for violation of the rule or any other legal requirements.[25]

Two commenters, MFA and John Henry & Company, expressed concern that the proposed information request provision would be too severe. MFA

[20] Interpretive Notice, NFA Compliance Rule 2–10: The Allocation of Block Orders for Multiple Accounts (June 9, 1998). Not all eligible account managers, *e.g.*, foreign account managers, will be subject to NFA requirements or inspections. However, FCMs will remain subject to the duty to supervise accounts, whether or not managed by third party account managers. *See,* 17 CFR 166.3 (2002). In addition, FCMs are subject to NFA's requirements.

[21] In addition, NFA anticipates it will continue to (1) provide guidance on the type of allocation methodologies designed to provide non-preferential treatment; (2) require CTAs to regularly analyze each trading program to ensure that the allocation method has been fair and equitable and to document this analysis and (3) remind FCMs that they have certain basic duties to their customers in connection with bunched orders.

[22] In the proposal, the Commission requested comment on whether the proposed rule struck the appropriate balance with regard to judging allocation and assigning responsibilities to account managers and FCMs. All comments received on this issue supported the changes.

[23] *Id.*

[24] 17 CFR 21.03(g) (2002).

[25] Cf. 17 CFR 21.03(h) (2002) (providing for other Commission remedies).

suggested that the standard of failure to provide requested information should be revised to ''willful failure to provide'' requested information. In the alternative, MFA suggested that the prohibition should be limited to the prohibition of the use of bunched orders, rather than a blanket prohibition of trading on all contract markets. John Henry & Company echoed MFA's concern, suggesting that the standard of failure to provide requested information should be revised to ''willful failure to provide.''

The Commission recognizes that prohibiting account managers from trading on contract markets would have a serious impact on the account manager and possibly the account manager's customers. The Commission notes that this approach is the same as that in similar provisions in the Act and rules and that the prohibition can only be invoked by the Commission, itself, when it has reason to believe that an account manager has failed to provide information requested pursuant to paragraph (a–1)(5)(iv)(A) or (a–1)(5)(iv)(B).[26] In addition, account managers will have the opportunity to have a hearing to contest the prohibition.[27] Thus, weighing the impact of this provision on account managers with the interest of protecting customers, the Commission has determined to adopt the provision as proposed, that a failure to answer a Commission request for information will result in a prohibition of trading on all contract markets.

The amended rule also provides that FCMs must retain certain records. Pursuant to amended Rule 1.35(a–1)(5)(iv)(C), FCMs that execute trades for orders eligible for bunching, or that carry accounts to which contracts executed for such orders are allocated, must maintain records that identify each order subject to post-execution allocation and the accounts to which contracts executed for such order are allocated.[28]

In order for FCMs to keep records required pursuant to the rule, account managers employing post-execution allocation procedures generally would be expected to forward written allocation instructions to the clearing firm by facsimile, e-mail, or other electronic means. In those instances in which allocation instructions are furnished orally, the FCM must create a written record of the account manager's instructions. In each case, these records will be available to the Commission and other regulatory agencies or self-regulatory organizations.

F. Account Certification and Self Regulatory Organization Rule Enforcement and Audit Procedures

As noted above, the Commission is clarifying the relative responsibilities of FCMs and account managers. Therefore, the amended rule, as proposed, deletes the requirement that account managers send certifications of their compliance with Rule 1.35(a–1) to FCMs. In addition, as the Commission is converting the recordkeeping requirement into an information availability requirement; the amended rule, as proposed, deletes the requirement that self regulatory organizations must adopt procedures to determine compliance with the previous rule's recordkeeping requirements.

III. Other Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of those rules on small businesses. The Commission has previously determined that contract markets [29], futures commission merchants [30], registered commodity pool operators [31] and large traders [32] are not ''small entities'' for purposes of the Regulatory Flexibility Act. Although the Commission did not receive any comments on the impact of the amended rule on ''small entities,'' some account managers may be considered ''small entities'' for the purposes of the Regulatory Flexibility Act. In such cases, the amendments to the rule will have the net effect of decreasing the regulatory burden for such small entities. In addition, the Commission has previously determined to evaluate within the context of a particular rule proposal whether all or some commodity trading advisors should be considered ''small entities'' for purposes of the Regulatory Flexibility Act and, if so, to analyze the economic impact on commodity trading advisors of any such rule at that time.[33] Commodity trading advisors who would place eligible orders pursuant to these procedures would likely do so for multiple clients and would likely be participating as investment managers in more than one financial market. Accordingly, the Commission does not believe that commodity trading advisors should be considered ''small entities'' for purposes of this rule.

B. Paperwork Reduction Act of 1995

This rulemaking contains information collection requirements. As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* the Commission has submitted a copy of the rule amendments to the Office of Management and Budget (OMB) for its review. No comments were received in response to the Commission's invitation in the proposed rules to comment on any potential paperwork burden associated with this regulation.

C. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The amended rule is intended to facilitate increased flexibility and consistency, and to rationalize application of Commission regulations to entities subject to other regulatory frameworks. The Commission is considering the costs and benefits of these rules in light of the specific provisions of section 15(a) of the Act:

1. Protection of market participants and the public.

While amended Rule 1.35(a–1)(5) is expected to lessen the burden imposed

[26] See, 17 CFR part 21 (2002).

[27] Similar statutory provisions and Commission rules have the same standard for failure to provide information. See, *e.g.*, 7 U.S.C. § 2(h)(5)(C)(ii) (2001), 17 CFR 21.03 (2002).

[28] The recordkeeping provisions of Rule 1.31 would still apply. 17 CFR 1.31 (2002). It is important to note that at the time of order placement with the FCM, current rules require that a customer identification code must be placed on an order ticket, unless the order is bunched. *See,* 17 CFR 1.35(a–1) (2002).

[29] 47 FR 18618, 18619 (April 30, 1982).

[30] *Id.*

[31] *Id.* at 18620.

[32] *Id.*

[33] *Id.*

upon FCMs and account managers, market participants and the public will be protected by requirements in the allocation procedure. Accordingly, the amended rule should have no effect on the Commission's ability to protect market participants and the public.

2. Efficiency and competition.

The amended rule is expected to benefit efficiency in the commodity futures and options markets, resulting in greater liquidity and market efficiency.

3. Financial integrity of futures markets and price discovery.

The amended rule should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the commodity futures and options markets.

4. Sound risk management practices.

The amended rule should have no effect on sound risk management practices.

5. Other public interest considerations.

The amended rule will also take into account certain effects of legislative changes and the passage of time.

After considering these factors, the Commission has determined to issue the amended rule.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Commodity options, Consumer protection, Contract markets, Customers, Members of contract markets, Noncompetitive trading, Reporting and recordkeeping requirements, Rule enforcement programs.

■ In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 5, 5a, 5b, 6(a), 6b, 8a(7), and 8c, 7 U.S.C. 7, 7a, 7b, 8(a), 8b, 12a(7), 12a(9), and 12c, the Commission hereby amends Part 1 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

■ 1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, 24.

■ 2. Section 1.35 is amended by revising paragraph (a–1)(5) to read as follows:

§ 1.35 Records of cash commodity, futures and option transactions.

* * * * *

(a–1) * * *

(5) *Post-execution allocation of bunched orders.* Specific customer account identifiers for accounts included in bunched orders need not be recorded at time of order placement or upon report of execution if the requirements of paragraphs (a–1)(5)(i)–(iv) of this section are met.

(i) *Eligible account managers.* The person placing and directing the allocation of an order eligible for post-execution allocation must have been granted written investment discretion with regard to participating customer accounts. The following persons shall qualify as eligible account managers:

(A) A commodity trading advisor registered with the Commission pursuant to the Act or excluded or exempt from registration under the Act or the Commission's rules, except for entities exempt under § 4.14(a)(3) or § 4.14(a)(6) of this chapter;

(B) An investment adviser registered with the Securities and Exchange Commission pursuant to the Investment Advisers Act of 1940 or with a state pursuant to applicable state law or excluded or exempt from registration under such Act or applicable state law or rule;

(C) A bank, insurance company, trust company, or savings and loan association subject to federal or state regulation; or

(D) A foreign adviser that exercises discretionary trading authority solely over the accounts of non-U.S. persons, as defined in § 4.7(a)(1)(iv) of this chapter.

(ii) *Information.* Eligible account managers shall make the following information available to customers upon request:

(A) The general nature of the allocation methodology the account manager will use;

(B) Whether accounts in which the account manager may have any interest may be included with customer accounts in bunched orders eligible for post-execution allocation; and

(C) Summary or composite data sufficient for that customer to compare its results with those of other comparable customers and, if applicable, any account in which the account manager has an interest.

(iii) *Allocation.* Orders eligible for post-execution allocation must be allocated by an eligible account manager in accordance with the following:

(A) Allocations must be made as soon as practicable after the entire transaction is executed, but in any event account managers must provide allocation information to futures commission merchants no later than a time sufficiently before the end of the day the order is executed to ensure that clearing records identify the ultimate customer for each trade.

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

(C) The allocation methodology must be sufficiently objective and specific to permit independent verification of the fairness of the allocations using that methodology by appropriate regulatory and self-regulatory authorities and by outside auditors.

(iv) *Records.*

(A) Eligible account managers shall keep and must make available upon request of any representative of the Commission, the United States Department of Justice, or other appropriate regulatory agency, the information specified in paragraph (a–1)(5)(ii) of this section.

(B) Eligible account managers shall keep and must make available upon request of any representative of the Commission, the United States Department of Justice, or other appropriate regulatory agency, records sufficient to demonstrate that all allocations meet the standards of paragraph (a–1)(5)(iii) of this section and to permit the reconstruction of the handling of the order from the time of placement by the account manager to the allocation to individual accounts.

(C) Futures commission merchants that execute orders or that carry accounts eligible for post-execution allocation, and members of contract markets that execute such orders, must maintain records that, as applicable, identify each order subject to post-execution allocation and the accounts to which contracts executed for such order are allocated.

(D) In addition to any other remedies that may be available under the Act or otherwise, if the Commission has reason to believe that an account manager has failed to provide information requested pursuant to paragraph (a–1)(5)(iv)(A) or (a–1)(5)(iv)(B) of this section, the Commission may inform in writing any designated contract market or derivatives transaction execution facility and that designated contract market or derivatives transaction execution facility shall prohibit the account manager from submitting orders for execution except for liquidation of open positions and no futures commission merchants shall accept orders for execution on any designated contract market or derivatives transaction execution facility from the account manager except for liquidation of open positions.

(E) Any account manager that believes he or she is or may be adversely affected or aggrieved by action taken by the Commission under paragraph (a–1)(5)(iv)(D) of this section shall have the opportunity for a prompt hearing in accordance with the provisions of § 21.03(g) of this chapter.

* * * * *

Issued in Washington, DC, on June 5, 2003 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–14776 Filed 6–10–03; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 201

[Docket No. RM02–7–000; Order No. 631]

Accounting, Financial Reporting, and Rate Filing Requirements for Asset Retirement Obligations; Notice of Correction

June 3, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction.

SUMMARY: The Federal Energy Regulatory Commission published in the **Federal Register** of April 21, 2003, a final rule amending its accounting and reporting requirements for asset retirement obligations. Inadvertently, account 364.9, asset retirement costs for base load liquefied natural gas terminaling and processing plant, and related instruction was not included in the Gas Plant Accounts in the natural gas companies' Uniform System of Accounts. This correction includes the account in the Uniform System of Accounts.

DATES: Effective on June 11, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Klose (Project Manager), Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8283.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission published in the **Federal Register** of April 21, 2003, (68 FR 19610) a final rule amending its accounting and financial reporting requirements for asset retirement obligations. Inadvertently, Gas Plant Account 364.9 (Asset retirement costs for base load liquefied natural gas terminaling and processing plant) and the instruction related to this account were not incorporated into the Uniform System of Accounts for natural gas companies in part 201 of the Commission's regulations. To address this omission, the Commission will publish in the **Federal Register** the following correction to the final rule document that was published in the **Federal Register** at 68 FR 19610, on April 21, 2003.

■ In rule FR Doc. 03–9260 published on April 21, 2003 (68 FR 19610) make the following correction.

■ On page 19624, in the second column, account 364.9 is added to part 201 in Gas Plant Accounts following account 363.6 to read as follows:

Gas Plant Accounts

* * * * *

364.9 Asset retirement costs for base load liquefied natural gas terminaling and processing plant.

This account shall include asset retirement costs on plant included in the base load liquefied natural gas terminaling and processing plant function.

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Magalie R. Salas,

Secretary.

[FR Doc. 03–14561 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Tepoxalin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The NADA provides for the veterinary prescription use of tepoxalin tablets for the control of pain and inflammation associated with osteoarthritis in dogs.

DATES: This rule is effective June 11, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: mberson@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

Schering-Plough Animal Health Corp., 1095 Morris Ave., Union, NJ 07083, filed NADA 141–193 that provides for veterinary prescription use of ZUBRIN (tepoxalin) Tablets for the control of pain and inflammation associated with osteoarthritis in dogs. The NADA is approved as of March 31, 2003, and the regulations in part 520 (21 CFR part 520) are amended by adding new § 520.2340 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning March 31, 2003.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.2340 is added to read as follows:

§ 520.2340 Tepoxalin.

(a) *Specifications.* Each tablet contains 30, 50, 100, or 200 milligrams (mg) tepoxalin.