exceeded their life limit, the alert telexes specify removing or monitoring the parts. The DGAC classified these alert telexes as mandatory and issued AD No. 2002–452(A), dated September 4, 2002, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs registered in the United States. Therefore, the proposed AD would require, within 10 hours TIS, determining whether the specified rotor part and serial numbers are installed by reference to the FME and, if installed, correcting the hours TIS and cycles. If a part exceeds its life limit, the AD would require replacing the part within 50 hours TIS. The actions would be required for the parts listed in the appendix of the alert telexes described previously.

The FAA estimates that this proposed AD would affect 760 helicopters of U.S. registry. The FAA also estimates that it would take approximately 1 work hour to determine the part and serial number and 8 hours to replace each affected part on 38 helicopters (5 percent of the total affected helicopters), and that the average labor rate is $60 per work hour. Required parts would cost approximately $64,560 depending on which part would be replaced. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,517,120.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2002–SW–56–AD.

Applicability: Model SA330F, G, and J; AS332C, L, and L1; SA341G; SA342J; AS350B, BA, B1, B2, B3, and D; AS355E, F, F1, F2, and N; SA–365C, C1, and C2; SA–365N and N1; and AS–365 N2 and N3 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a main or tail rotor (rotor) part, loss of a rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS), determine by reference to the equipment log card (FME) whether any rotor part and serial number specified in Table 1, paragraph 3, of the Appendix of each of the following Eurocopter France (ECF) Alert Telexes for the specified helicopter model series is installed: Nos. 65.110 for SA330, 62.00.58 for AS332, 65.60 for SA341 and SA342, 62.00.25 for AS350, 62.00.27 for AS355, 65.41 for SA–365C, and 62.00.19 for SA365N and AS–365, all dated August 13, 2002.

(1) If none of the parts are installed, no further action is required.

(2) For each affected part listed in Table 1, paragraph 3, of the Appendix of each applicable ECF Alert Telex specified in paragraph (a) of this AD, add the hours TIS and cycles to the hours TIS and cycles recorded on the FME. If a part exceeds its life limit in TIS or cycles, replace the part with an airworthy part within 50 hours TIS.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 2002–452(A), dated September 4, 2002.

Issued in Fort Worth, Texas, on March 6, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–6137 Filed 3–13–03; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB94

Account Identification for Eligible Bunched Orders

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing to amend Commission Rule 1.35(a–1) (''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 trading session (hereinafter referred to as ''bunching''). The

proposed rule would expand the availability of bunching, simplify the process, and clarify the respective responsibilities of account managers and futures commission merchants (''FCMs'').

DATES: Comments must be received by April 28, 2003.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to *secretary@cftc.gov*. Reference should be made to ''Eligible orders.''

FOR FURTHER INFORMATION CONTACT: Christopher W. Cummings, Special Counsel, 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: *ccummings@cftc.gov or tbland@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Regulatory Requirements

Commission Rule 1.35(a–1), in effect since August 27, 1998, allows 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) limits the types of customers whose orders may be bunched and requires 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.

Before placing an order eligible for post-execution allocation, the account manager must identify, to the FCM clearing the order, each eligible customer account to which fills will be allocated. Account managers must provide written certification that they have identified the eligible customer accounts to the FCM. Foreign account managers must provide written certification from foreign authorities that they are subject to regulation.

Currently, account managers must create and timestamp an order origination document, identify the order by group identifier on the office or floor order tickets, and identify the transaction on contract market trade registers. The current rule also requires contract markets to adopt audit procedures to determine compliance with Rule 1.35(a–1).

B. Developments Since Current Regulations Were Adopted

In December 2000, Congress passed the Commodity Futures Modernization Act (''CFMA''). 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 passage 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.

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. Similarly, as markets become more global in scope, account managers, both domestic and foreign, 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 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'').[2] The study found 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.''[3] The rule the Commission is proposing today would adopt many of the approaches recommended in the Best Practices Study.

II. Proposed Changes to Rule 1.35(a–1)(5)

A. Eligible Customers

As noted, the current rule limits eligibility for bunching to certain types of sophisticated customers. The proposed rule would expand eligibility to all customers who provide written investment discretion to account managers.[4]

Bunched orders can provide advantages to account managers and their customers by facilitating the prompt execution of small orders. Customers can benefit when a bunched order is placed because a bunched order is more likely to be executed at a single price than would be the case for a series of separate orders. In fact, customers may be disadvantaged in the quality of the timing and execution of their order if their orders are not bunched. With proper protections in place under the proposed rule, customers should be assured that their trade allocations are fair and equitable. Thus, the Commission proposes to eliminate existing Rule 1.35(a–1)(5)(ii). Under the proposed rule, all customer orders would be eligible for inclusion in bunched orders and thus all customers that have granted written discretion to an eligible account manager would be able to benefit from the advantages of bunched orders.

The Commission invites comment on whether the proposed expansion of the class of eligible customers is appropriate and whether the rule contains proper protections.

On a related manner, in 1997, the Commission issued an interpretive notice currently found at Appendix C to part 1 which allows bunching under certain circumstances.[5] Specifically, the Commission allows CTAs to bunch orders if they prefile their allocation procedures with a clearing member, NFA, or an exchange. The Commission requests comments on whether this interpretive notice should be modified in any way given the proposed changes to Rule 1.35(a–1)(5).

B. Eligible Account Managers

The Commission also is proposing to expand the class of account managers permitted to bunch orders. The current rule applies to, among others, commodity trading advisors (''CTAs'') and investment advisers (''IAs'') who are registered with the Commission or the Securities Exchange Commission (''SEC''). The Commission is proposing to allow CTAs and IAs who are exempt from registration or are excluded from the definition of CTA or IA by operation of law or rule to be eligible account managers. Such entities are generally

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

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

[3] *Id.* at 25.

[4] 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.

[5] 17 CFR part 1, Appendix C (2002), 62 FR 25470 (May 8, 1997).

exempt from registration because their clients are sophisticated investors. Exempt account managers, however, remain subject to the antifraud provisions of the Commodity Exchange Act and the Commission's regulations. The proposed rule would not apply to associated persons or Introducing Brokers exempt from Commission registration as CTAs pursuant to Rule 4.14(a)(3) and (6).[6]

The current rule allows foreign advisors to be eligible account managers only if they are subject to regulation by a foreign regulator or self-regulatory organization that has been granted an exemption pursuant to Rule 30.10[7] or have entered into a Memorandum of Understanding or other arrangement with the Commission. As proposed, Rule 1.35(a–1)(5)(i)(D) would allow foreign advisors, who exercise discretionary trading authority over the accounts of non-United States persons, to be eligible account managers.[8]

The Commission, of course, would retain antifraud and antimanipulation authority. The Commission notes that foreign advisers under the proposed rule 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.[9]

As noted above, the proposal would expand the categories of entities permitted to bunch orders. The Commission requests comments on whether it is appropriate to permit these entities to be eligible account managers and whether the proposed protections are sufficient.

C. Disclosure

The Commission proposes to amend the disclosure requirement to be an information availability requirement based upon the fact that the Commission does not generally require registrants to affirmatively disclose the mechanics of the process of trading.[10]

Current Rule 1.35(a–1)(5)(iii) specifies certain disclosure requirements that account managers must provide to customers. The proposal would replace these requirements with more general requirements that eligible account managers make certain information available to customers upon request. Account managers would be required to make the following information available to customers: (1) The general nature of the allocation methodology the account manager uses; (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; and (3) 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. The Commission is proposing to delete the requirement that account managers set forth the standard by which they will judge the fairness of the post-execution allocations as this essential requirement is provided by the description of the nature of the methodology and monitoring the account manager's post execution allocations for bias over time. More importantly, the Commission is proposing to retain the requirement that summary or composite data, sufficient to compare results with the results of other comparable customers, be made available to customers. In addition, the Commission proposes to add a requirement that summary or composite data about accounts in which the account manager has an interest be made available to customers.

The Commission invites comment on whether the proposal to change the disclosure requirement into an information availability requirement is appropriate.

D. Account Certification

Current Rule 1.35(a–1)(5)(iv) requires that account managers make certain certifications to FCMs. Both account managers and FCMs have claimed that this requirement is burdensome, an impediment to the use of current procedures and that it contributes to uncertainty regarding the relative responsibility of FCMs and account managers. Accordingly, the Commission is proposing to delete this requirement.

E. Allocation

The proposed rule would retain the essential requirement contained in the existing rule that the allocation must be fair and equitable and that no account or group of accounts may receive consistently favorable or unfavorable treatment. The proposal, however, would make several changes to the provisions governing allocation.

First, as noted above, the Commission is proposing to expand eligibility to all customers who have provided written discretion to an eligible account manager. Thus, the proposal would eliminate existing Rule 1.35(a–1)(5)(v)(A) that requires that allocations only be made among eligible customers. Second, to minimize end-of-trading session congestion, the Commission proposes to amend existing Rule 1.35(a–1)(5)(v) by requiring account managers to provide allocation information to FCMs in a time sufficiently before the end of the trading session during which the order is executed to ensure that clearing records identify the ultimate customer for each trade. Third, the Commission proposes to modify the provision addressing independent review of allocations. The proposed rule would retain the requirement that allocation methodology must be sufficiently objective and specific to permit independent verification of the fairness of the allocation.[11] The Commission, however, is deleting the requirement that appropriate allocation of a given trade should be verifiable because that requirement, along with the accompanying recordkeeping requirement in Rule 1.35(a–1)(vi) required an assessment of ''appropriateness'' on an order-by-order basis. Industry representatives have stated that requiring an assessment of the fairness on an order-by-order basis may not result in the most efficient allocation of trades entered by an account manager.[12] Therefore, and consistent with the recommendation of the Best Practices Study, the proposed rule would require that verification of fairness be judged over time rather than on an order-by-order basis.[13]

The proposal also would clarify the respective responsibilities of account

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

[7] 17 CFR 30.10 (2002). Rule 30.10 permits any person to petition for an exemption from 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 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.

[8] 48 FR 35248, 35261 (August 3, 1983); *see also,* CFTC Staff Letter No. 76–2 [1975–1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,222 (August 15, 1976)(Commission staff would not recommend enforcement action for failure to register as a CPO where such persons are located outside the U.S. and operating a pool that accepts no United States participants and no funds from United States sources).

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

[10] Registrants must provide such information if requested.

[11] 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.''

[12] It is important to note that the standards for fair allocation of trades may shift over time.

[13] Best Practices Study at 26.

managers and FCMs. Proposed Rule 1.35(a–1)(5)(iii) would explicitly state that allocation of bunched orders must be made by account managers, not FCMs. Eliminating the certification requirements will reduce the administrative and recordkeeping burden on FCMs. Of course, FCMs will still have responsibility to monitor for unusual account activity. In an interpretive notice accompanying NFA Compliance Rule 2–10, NFA notes ''[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, the 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. The FCM with such notice must make a reasonable inquiry into the matter and, if appropriate, refer the matter to the proper regulatory authorities.''[14] Thus, FCMs will have an ongoing responsibility to monitor for unusual account activity.[15]

The Commission requests comment on whether the proposed changes strike the appropriate balance with regard to judging allocations and assigning responsibilities to account managers and FCMs.

F. Recordkeeping

Current Rule 1.35(a–1)(5)(vi) requires account managers and FCMs to keep specific information to identify customer orders and reconstruct trades. Pursuant to the proposed rule, the Commission is clarifying that the fairness of an allocation will not be assessed on an order-by-order basis but on an assessment over time. If divergent performance among client accounts occurs over time, the account manager must have records to demonstrate that the divergent performance is attributable to factors other than unfair trade allocation. Thus, the proposed rule will allow account managers and FCMs greater flexibility in recordkeeping, while retaining the ability of the Commission to determine unfair trade allocation.

Specifically, the Commission proposes to eliminate existing Rule 1.35(a–1)(5)(vi) and to replace the recordkeeping requirement with a requirement that account managers make certain information available to any representative of the Commission, the United States Department of Justice, or other appropriate regulatory agency. The information would include the information required to be made available to customers pursuant to proposed Rule 1.35(a–1)(5)(ii) and the allocation information created pursuant to proposed Rule 1.35(a–1)(5)(iii). Under proposed Rule 1.35(a–1)(5)(iv)(C), FCMs that execute trades for orders eligible for post-execution allocation, 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.[16]

For example, account managers employing post-execution allocation procedures generally would be expected to forward written allocation instructions to the clearing firm by facsimile or e-mail or other electronic means.[17] 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. The Commission should be able to reconstruct trades from these records.

The proposal contains a provision to address cases in which account managers fail to provide the Commission with the information requested pursuant to proposed Rule 1.35(a–1)(5)(iv)(A) or proposed Rule 1.35(a–1)(5)(iv)(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. Any account manager that believes he or she is adversely affected by this process may use the procedures outlined in Rule 21.03(g).[18] Any prohibitions imposed pursuant to this Rule 1.35(a–1)(5)(iv)(D) would be without prejudice to other remedies the Commission or other regulatory body may have against the account manager in question for violation of the rule or any other legal requirements.[19]

G. Self-Regulatory Organization Rule Enforcement and Audit Procedures

Existing Rule 1.35(a–1)(5)(vii) requires contract markets to adopt audit procedures to determine compliance with the certification requirements of Rule 1.35(a–1)(5)(vi). As noted above, the Commission is proposing to eliminate the recordkeeping and certification requirement and, accordingly, to eliminate Rule 1.35(a–1)(5)(vii).

Although, the Commission proposes to eliminate Rule 1.35(a–1)(5)(vii), the Commission will work with NFA to evaluate NFA's audit and examination process to identify any supervisory enhancements that will be necessary to ensure that customers are adequately protected and treated fairly.

III. Requests For Comment

The Commission has identified throughout this release issues on which it requests comment. In addition to the specific issues raised above, the Commission welcomes comment on any aspect of the proposed rule.

IV. Other Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et. seq.,* requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined that contract markets,[20] futures commission merchants,[21] registered commodity pool operators [22] and large traders [23] are not ''small entities'' for purposes of the Regulatory Flexibility Act. 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.[24]

[14] Interpretive Notice, NFA Compliance Rule 2–10: The Allocation of Block Orders for Multiple Accounts (June 9, 1998).

[15] *Id; see also,* 17 CFR 166.3 (2002)(stating that Commission registrants have a duty to diligently supervise handling of all commodity interest accounts). FCMs also have a duty to monitor for money laundering and report such activities to the appropriate regulatory authority. Interpretive Notice, NFA Compliance Rule 2–9: FCM and IB Anti-Money Laundering Program. For example, if an adviser places bunched orders with an FCM and routinely instructs the FCM to allocate favorable trades or unfavorable trades in a bunched order to one customer account, then this could constitute unusual account activity that an FCM has a duty to investigate and if appropriate report to regulators.

[16] The recordkeeping provisions of Rule 1.31 would still apply. 17 CFR 1.31 (2002).

[17] It is important to note that unless the order is submitted consistent with the requirements of this proposed rule, the order must contain a customer identification number. *See,* 17 CFR 1.35(a–1) (2002).

[18] 17 CFR 21.03(g) (2002).

[19] *See,* 17 CFR 21.03(h) (2002).

[20] 47 FR 18618, 18619 (April 30, 1982).

[21] *Id.*

[22] *Id.* at 18620.

[23] *Id.*

[24] *Id.*

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.

Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action proposed to be taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act of 1995

This proposed rulemaking affects information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission has submitted a copy of this section to the Office of Management and Budget for its review.

Collection of Information

Rules Pertaining to Contract Markets and Their Members, OMB Control Number 3038–0022.

The expected effect of the proposed amended rule will be to not change the burden previously approved by OMB for this collection because, although it will result in an increase in the number of filings by account managers, it will result in a decrease in filings by FCMs.

Specifically:

The burden associated with Commission Rule 1.35(a–1)(5) is expected to be unchanged:

Estimated number of respondents: 400.

Annual responses by each respondent: 1.

Estimated average hours per response: 13.

Annual reporting burden: 52 hours.

This annual reporting burden of 52 hours represents no change in the number of hours as a result of the proposed amendments to Rule 1.35(a–1).

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

The Commission considers comments by the public on this proposed collection of information in—

• Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

• Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhancing the quality, usefulness, and clarity of the information to be collected; and

• Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street N.W., Washington, DC 20581, (202) 418–5160.

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 proposed amendments are 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 certain of the proposed amendments are expected to lessen the burden imposed upon FCMs and account managers, market participants and the public will be protected by requirements in the allocation procedure. Accordingly, the proposed amendments should have no effect on the Commission's ability to protect market participants and the public.

2. Efficiency and competition.

The proposed amendments are 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 proposed amendments 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 proposed amendments should have no effect on sound risk management practices.

5. Other public interest considerations.

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

After considering these factors, the Commission has determined to propose the amendments discussed above. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposal with their comment letters.

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 proposes to amend 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 proposed to be 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) 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 (D) of this section shall have the opportunity for a prompt hearing in accordance with the provisions of § 21.03(g) of this chapter.

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Issued in Washington, DC on March 10, 2003 by the Commission.

Jean A. Webb,

Secretary of the Commission.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–131478–02]

RIN 1545–BB25

Guidance Under Section 1502; Suspension of Losses on Certain Stock Dispositions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations; withdrawal of notice of proposed rulemaking; and notice of public hearing.

SUMMARY: In the rules and regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations under section 1502 that redetermine the basis of stock of a subsidiary member of a consolidated group immediately prior to certain