

appropriate, without a request for records or testimony.

(b) *OCC policy.* It is the OCC's policy regarding non-public OCC information that such information is confidential and privileged. Accordingly, the OCC will not normally disclose this information to third parties.

(c) *Conditions and limitations.* \* \* \*

\* \* \* \* \*

5. In § 4.37, paragraph (a)(1) is revised and in paragraphs (a)(2)(i) and (ii) the term "Washington, DC office" is removed and the term "Washington office" is added in its place, to read as follows:

**§ 4.37 Persons and entities with access to OCC information; prohibition on dissemination.**

(a) \* \* \*

(1) Generally. Except as authorized by this subpart or otherwise by the OCC, no current or former OCC employee or agent may, in any manner, disclose or permit the disclosure of any non-public OCC information to anyone other than an employee or agent of the Comptroller for use in the performance of OCC duties.

\* \* \* \* \*

**Appendix A to Subpart C—[Amended]**

6. In Appendix A to Subpart C, section II, paragraph 7, the term "12 CFR 4.38(b)" is removed and the term "12 CFR 4.39(c)" is added in its place.

Dated: May 20, 1999.

**John D. Hawke, Jr.,**

*Comptroller of the Currency.*

[FR Doc. 99-13725 Filed 5-28-99; 8:45 am]

BILLING CODE 4810-33-P

**COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Part 5**

**Economic and Public Interest Requirements for Contract Market Designation**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rulemaking.

**SUMMARY:** The Commodity Futures Trading Commission (Commission) is revising its Guideline on Economic and Public Interest Requirements for Contract Market Designation, 17 CFR Part 5, Appendix A (Guideline No. 1). Guideline No. 1 details the information that an application for contract market designation should include in order to demonstrate that the contract market meets the economic requirements for designation. Previously, the

Commission promulgated fast-track review procedures to reduce its review time to review designation applications. To streamline the application process further, the Commission is revising Guidelines No. 1, reducing any unnecessary burdens associated with the designation application itself.

Specifically, the Commission is organizing Guideline No. 1 into several specific application forms, making use of a chart format for applications for designation of futures and options contracts to the extent possible. Moreover, the Commission is clarifying that a portion of the application may make use of third-party generated materials. In addition, the Commission is clarifying the review standards for several of the designation requirements. The Commission also is adding a new appendix Part 5 specifying the information that a foreign board of trade should submit to the Commission when seeking no-action relief to offer and to sell, to persons located in the United States, a futures contract on a foreign securities index traded on that foreign board of trade.

**EFFECTIVE DATE:** August 2, 1999.

**FOR FURTHER INFORMATION CONTACT:**

Paul M. Architzel, Chief Counsel, Richard H. Shilts, Director, Market Analysis Section, or Kimberly A. Browning, Attorney/Advisor, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1125 21st Street, NW, Washington, DC 20581. Telephone (202) 418-5260. E-mail:

[PArchitzel@cftc.gov], [RShilts@cftc.gov] or [KBrowning@cftc.gov].

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The requirement that contract markets meet specified conditions has been a fundamental tool of federal regulation of commodity futures exchanges since the Futures Trading Act of 1921, Pub. L. No. 67-66, 42 Stat. 187 (1921 Act).<sup>1</sup> Currently, the statutory requirements for contract market designation are found in Sections 5 and 5a of the Commodity Exchange Act (Act) and, additionally, for indexes of securities, in Section 2(a)(1)(B) of the Act. Designated contract markets must provide for the prevention of dissemination of false information (Section 5(3) of the Act); must provide for the prevention of price manipulation (Section 5(4) of the Act); must provide for delivery periods which will prevent

<sup>1</sup> A more complete description of the contract market approval process under the 1921 Act is provided in the proposed rulemaking, 63 FR 38537, n. 1 (July 17, 1998).

market congestion (Section 5a(a)(4) of the Act); and must permit delivery on the contract of such grades, at such points and at such quality and locational differentials as will tend to prevent or to diminish market manipulation (Section 5a(a)(10) of the Act).<sup>2</sup> Included among these provisions is the general requirement of Section 5(7) of the Act that trading in a proposed contract not be contrary to the public interest. The contract market must meet these requirements both initially and on a continuing basis.<sup>3</sup>

The Commission, as an aid to the exchanges, has provided guidance in meeting these statutory requirements. In 1975, the newly formed Commission, in one of its earliest actions, issued its Guideline on Economic and Public Interest Requirements for Contract Market Designation, 40 FR 25849 (1975) ("Guideline No. 1").

Subsequently, the Commission revised this Guideline, publishing it as Appendix A to Part 5 of the Code of Federal Regulations, 47 FR 49832 (November 3, 1982). Guideline No. 1 was again revised in 1992, 57 FR 3518 (January 30, 1992). The 1992 revisions streamlined the designation application for both futures and option contract markets. In addition, the 1992 revisions introduced the use of a new checklist-style format for applications for designation of option contracts.<sup>4</sup>

In 1997, the Commission began a far-reaching program of regulatory reform. Its first initiative was to establish fast-track procedures for Commission review and approval of applications for contract market designation. See, Commission Rule 5.1, 62 FR 10434 (March 7, 1997). The fast-track procedure creates a streamlined and speedy alternative review process for Commission consideration of designation applications, reducing unnecessary regulatory burdens on exchanges while also preserving the opportunity for public participation and

<sup>2</sup> A further listing of contract market approval requirements under the Act is provided in the proposed rulemaking, 63 FR 38537, n. 2.

<sup>3</sup> Generally, the burden of demonstrating compliance rests with the contract market. Section 6 of the Act provides, in part, that:

Any board of trade desiring to be designated a "contract market" shall make application to the Commission for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.

<sup>4</sup> For a more complete discussion of the revisions made to Guideline No. 1 in 1982 and 1992, see 63 FR 38537-38538.

fulfillment of the Commission's oversight responsibilities.<sup>5</sup>

The Commission, in addition to promulgating the fast-track review rules, indicated its intent broadly to reexamine the form and content requirements of Guideline No. 1, including consideration of the possible applicability of an option-style checklist to applications for designation of proposed futures contracts.<sup>6</sup> The Commission has noted that "[i]mplementation of fast-track review and approval procedures, separately and together with the planned revision of the format and content requirements for designation applications, should result in significantly streamlining the procedures and regulatory requirements associated with the current contract designation process," 62 FR 10435, and that these initiatives should permit the exchanges greater flexibility to compete with foreign exchange-traded products and with both foreign and domestic over-the-counter transactions while maintaining the basic protections embedded in the Act. 61 FR 59390 (November 22, 1996). In this regard, the Commission's approval process for new contracts, as well as its designation application process, also is in keeping with a 1998 International Organization of Securities Commissions' (IOSCO) publication entitled "Applicability of the Surveillance Guidance to Other Exchange-Traded Derivatives Products." That IOSCO report makes general recommendations to market authorities concerning what a market surveillance program should contain to monitor effectively exchange derivatives markets without unnecessarily affecting market innovation.

#### A. Proposed Amendments

Based upon its experience in administering the current Guideline and the fast track procedures, the

<sup>5</sup> Under the fast-track review procedures, applications for designation of certain cash-settled futures and option contracts are deemed to be approved in as few as ten days after receipt. Other applications are deemed approved 45 days after receipt, absent contrary notification. Since implementing the fast-track review rule in April 1997, 59 contracts have been approved by the Commission under this rule, 26 under the 10-day procedure and 33 under the 45-day procedure. An additional 55 contracts were approved under non-fast-track review procedures.

<sup>6</sup> Guideline No. 1 applies only to the economic requirements that must be met in order to be designated as a contract market. Additional requirements are found in the Commission's Guideline No. 2, 1 Comm. Fut. L. Rep (CCH) ¶ 6430. These relate to the contract market's program for compliance with its self-regulatory responsibilities. Generally, the review of these issues is most significant in connection with the first application for contract designation from a particular board of trade.

Commission proposed to revise Guideline No. 1 in several important respects. 63 FR 38537 (July 17, 1998). First, the Commission proposed to streamline the Guideline by reorganizing its contents to present applications for designation of futures contracts in a clearer, more focused format including the use of charts. Specifically, the Commission proposed to reorganize the contents of the Guideline to address applications for four different types of contracts: (1) Physical delivery futures; (2) cash-settled futures; (3) options on futures; and (4) options on physicals. Except for options on physicals, each separate application was proposed to be self-contained. Under the proposed amendments, information for option contracts would continue to be provided by checklist. In addition, the Commission proposed to clarify certain standards for review which have evolved based upon administrative experience and to clarify that exchanges may use information developed by third parties in the application.

Finally, the Commission proposed that a new appendix be added to Part 5 specifying the information that a foreign board of trade should file with the Commission when seeking no-action relief to offer and to sell in the United States a futures contract on a foreign securities index traded on that foreign board of trade.

#### B. Comments

Two commenters, the Chicago Board of Trade (CBT) and the Minneapolis Grain Exchange (MGE), responded to the notice of proposed rulemaking. Both CBT and MGE favored strongly the Commission's proposed revisions to streamline Guideline No. 1. However, although MGE supported the proposed revisions clarifying the review standards for several of the designation requirements, CBT opposed the proposed clarification of the review standards. The MGE's and the CBT's comments are discussed more fully below.

## II. Final Revisions to the Guideline

Based upon thorough and careful consideration of the comments to the proposed rulemaking and its experience in administering the current Guideline as well as the fast-track procedures, the Commission has determined to revise Guideline No. 1.

### A. Final Changes to the Guideline's Format

#### 1. Cash Market Overview

Currently, exchanges are required to include a cash market description in their designation application. 17 CFR Part 5, Appendix A (a)(1). To reduce the burden on the exchanges in satisfying the Guideline's cash-market overview standards, the Commission is amending Guideline No. 1, as proposed, to recognize explicitly the acceptability of a variety of materials in fulfillment of this requirement. This final revision permits exchanges to submit cash-market descriptions based not only on material their staffs generate, but also on materials obtained from other sources.<sup>7</sup> An exchange may develop such material through outside sources during a feasibility study of a proposed contract, as part of the exchange's development and consideration of a proposal or as part of its new product marketing effort. The two commenters, CBT and MGE, both supported this proposed revision. In particular, CBT was of the view that contracts markets using third party materials in support of their designation applications will experience financial and staff resource savings. Specifically, CBT stated that:

[T]hird-party material is often times readily available to contract markets from sources such as trade groups and consultants [and] can prove less expensive to obtain than having a contract market's own staff, which may have limited resources, do the research and compile the data [in support of the application]. Moreover, this data from third parties can prove beneficial in that certain trade groups and consultants may possess a high level of expertise and knowledge of the subject matter in question.<sup>8</sup>

#### 2. Charts Relating to Individual Contract Terms and Conditions

Guideline No. 1 requires exchanges to explain how each major term of a proposed contract, except for those identical to terms the Commission already has approved, is consistent with cash market practices or to justify the reason why the contract terms appropriately are inconsistent with such practices. Under the former Guideline, exchanges submitted this explanation or justification in narrative form. Further to streamline the application process, the Commission is clarifying, as proposed, that an exchange, in lieu of a

<sup>7</sup> In allowing the submission of such third party materials, the Commission is not amending the requirement that each application (except for options on futures) must include a cash-market overview.

<sup>8</sup> See, CBT's comment letter submitted to the Commission in response to the proposed rulemaking dated September 15, 1998 at p. 2.

narrative description, may complete a chart to provide the required information.<sup>9</sup> The revised chart format reduces the amount of verbiage and the overall length of designation applications. Both of the commenters agreed that the proposed chart format would benefit contract markets by reducing the amount of paperwork, costs and time necessary to satisfy designation application requirements.

As the Commission noted in the notice of proposed rulemaking, the chart is a template enumerating the significant contract terms and conditions typically contained in most contracts. That template may be modified as necessary to reflect the nature of the particular commodity, the economic characteristics of the commodity or the contract's specific terms and conditions.<sup>10</sup>

The designation application includes a brief description of the contract's major terms and conditions. Where the term is consistent with prevailing cash market practices, column 4 may be completed by providing a very brief statement as to how the term or condition comports with cash practices. However, where the term or condition does not comport with cash market practices, a more extensive discussion is required showing why the provision is necessary or appropriate for the hedging or pricing utility of the contract and the overall effect of the provision on deliverable supplies. Consistent with current requirements, no such justification of an individual term or condition is required when that term or condition is the same as one the Commission already approved. For such contract terms, the board of trade should refer in column 2 of the chart to the rule number or other description of the original approved provision.

In keeping with current requirements, the application also requires an exchange to specify exchange speculative position limits. The Commission on April 27, 1999, amended its speculative position limit rules and recodified the provisions of rule 1.61 as rule 150.5. 64 FR 24038 (May 5, 1999). Guideline No. 1 has been amended to conform to the requirements of new rule 150.5. The Guideline No. 1 application forms set

out the operative requirements for exchange speculative position limits at the time of initial designation. Specifically, the spot-month position limits for physical delivery contracts should be set in relation to the contract's deliverable supply estimate<sup>11</sup> and for cash-settled contracts should be no greater than necessary to minimize the potential for manipulation or distortion of the contract's or the underlying commodity's price.

Guideline No. 1 incorporates the operative provisions of rule 150.5(a) and (b) that establish the requirements for speculative position limits at the time of initial contract designation. Subsequent amendments to exchange-set speculative position limits which are permitted under other provisions of Commission rule 150.5 are not included on the application form. For example, adjustments to the initial speculative position limits are permitted under Commission rule 150.5(c) as open interest in a contract grows, and various forms of position accountability rules may be substituted for speculative position limits under Commission rule 150.5(e). In addition, exchange speculative position limits are not required for contracts on a "major foreign currency" under Commission rule 150.5(a), and applications for designation of such a contract may simply leave that box of the application blank.

To facilitate the submission of cash-market description data, the Commission is providing, through its Division of Economic Analysis Web Site ([www.cftc.gov/dea/dea.html](http://www.cftc.gov/dea/dea.html)), the charts relating to individual contract terms and conditions, as described above. The exchanges will be able to download these charts onto their own computer systems for completion. The Commission believes that using such electronic charts will reduce the amount of paperwork generated during the designation application process. In addition, the use of these charts will

<sup>11</sup> However, it should be noted that spot-month speculative position limits are not a substitute for inadequate deliverable supplies. In this respect, the fact that an exchange may specify a spot-month speculative position limit that equals or is less than the "rule-of-thumb" standard of one-fourth of a low deliverable supply estimate does not mean that deliverable supplies are at adequate levels. The Commission has approved new futures contracts or amended existing futures contracts with low deliverable supplies only after an exchange has exhausted potential sources of deliverable supplies and, if necessary, adopted low spot-month speculative limits to give it the ability to limit potential delivery demand. The preferred approach under the Act if deliverable supplies are inadequate is for the exchange to modify the delivery specifications to enhance deliverable supplies. See, section 5a(a)(10) of the Act.

foster more uniform exchange designation application submissions, aiding Commission staff in performing expeditious application reviews.

#### B. Clarification of Review Standards

As explained in the proposed rulemaking, central to an application for designation is an exchange's demonstration that the proposed contract will not be susceptible to price manipulation or distortion. For physical delivery contracts, this requires a demonstration that the deliverable supplies provided under the contract's terms are adequate, and for cash-settled contracts, this requires that the cash price series to be used for settlement is reliable. In light of the importance of these issues to a designation application, the Commission is clarifying as proposed, these requirements in the Guideline.

The two commenters gave differing views concerning these proposed clarifications. Specifically, MGE favored them and stated that "clarifying the [designation application] information required [is a] welcomed improvement to the application process."<sup>12</sup> CBT, however, opposed the proposed clarifications. In particular, CBT expressed the view that adoption of the proposed revisions would inhibit necessary flexibility during the designation application process.

#### 1. Adequacy of Deliverable Supply

Exchanges are required to demonstrate that proposed contracts provide for deliverable supplies that will not be conducive to price manipulation or distortion. The Commission is clarifying, as proposed, the requirement that an exchange include in its designation application an analysis of the adequacy of deliverable supply, including an estimate of the deliverable supplies for the delivery months specified in the proposed contract. Under the former Guideline, the requirement of an estimate of deliverable supplies was implicit. This final clarification explicitly requires that applications for designation of a physical delivery futures contract include within a separate chart a quantitative estimate of expected deliverable supplies and a description of the methodology used to derive the estimate.

For commodities with seasonal supply or demand characteristics, the deliverable supply analysis should be based on that period when potential supplies typically are at their lowest

<sup>12</sup> See MGE's comment letter to the proposed rulemaking dated September 15, 1998.

<sup>9</sup> Exchanges still have the option of submitting the required explanation or justification in narrative form if they prefer.

<sup>10</sup> For example, if a contract provides for more than one quality specification under commodity characteristics (e.g., a grade standard as well as a weight specification), the board of trade may add a separate line item to address each commodity characteristic separately. For line items in the chart that are not applicable to the proposed contract, the board of trade should simply indicate "N.A."

levels. The estimate should be based on statistical data when reasonably available covering a period of time that is representative of actual patterns of production and consumption of the commodity. If data are taken from publicly available sources, the board of trade should reference the source material used. If the board of trade independently derives the estimate based on information not readily verifiable or on trade interviews, the Commission may request that the board of trade provide the workpapers or other source materials used in the analysis.

As mentioned above, CBT did not favor the proposed clarifications. In particular, CBT argued that the Commission should provide a more definitive description of deliverable supply for the relevant cash market, as well as explain its "rule-of-thumb" formula for determining spot month speculative limits.<sup>13</sup> However, the Guideline does provide such guidance on deriving an estimate of deliverable supplies. The estimate of deliverable supplies should be made taking into consideration the terms and conditions specified for the deliverable product and the economic realities of the cash market underlying the futures contract.<sup>14</sup> Thus, for example, it should take into account the deliverable supply which is available when quality and price differentials are applied. For a physical-delivery futures contract, this estimate represents product which is in store at the delivery point(s) specified in the futures contract or economically can be moved into or through such points consistent with the delivery procedures set forth in the contract and which is available for sale on a spot basis within the marketing channels that normally are tributary to the delivery point(s). For contracts that utilize a shipping certificate or similar delivery instrument, the estimate of deliverable supply should reflect the fact that the

underlying commodity may not have to be moved into or through the delivery point(s) prior to delivery of the shipping certificate in the futures market.

For financial instrument contracts, deliverable supply consists of available supplies of the instrument meeting the contract's delivery standards that are available, at prevailing cash market values, to traders wishing to make future delivery. For example, significant quantities of off-the-run notes and bonds typically may be held by the Federal Reserve and long-term investment portfolios (e.g., pension funds) and would not be readily available for delivery on proposed futures contracts on U.S. government debt instruments except at distorted prices. Recognizing this and based on the opinions of knowledgeable industry participants, Commission staff historically has used a rule-of-thumb that only 50 percent of the on-the-run U.S. Treasury bond and 10 percent of each of the next two off-the-run bonds are economically available for delivery.

## 2. Justification of Cash Settlement Price

The adequacy of the procedures for determining the cash settlement price is central to the Commission's review of proposed cash-settled contracts. Applications for such proposed futures contracts continue to be required to demonstrate that those procedures will result in a cash settlement price which reflects the underlying cash market and is not subject to manipulation or distortion. In order to provide additional guidance to exchanges in meeting this requirement, the Commission is clarifying, as proposed, two of the criteria, which it has identified through past experience for meeting these requirements. In this regard, any cash settlement price which an exchange determines through a survey method to elicit price quotes should include a number of polled entities which is representative of the underlying cash market. In no event, however, may the polling sample include fewer than four unrelated entities that do not take positions for their own account in the futures, option or underlying cash markets. Where the entities to be polled may trade in such markets for their own accounts, a minimum of eight unrelated entities is required.

After thoroughly considering all the comments received and based upon its own analysis, the Commission believes that the Guideline strikes the appropriate balance of providing greater clarification and specificity of the review standards without impeding the

flexibility necessary for an effective designation application review process.

## C. Foreign Futures Markets

The offer or sale in the United States of futures contracts traded on or subject to the rules of a foreign board of trade is subject to the Commission's exclusive jurisdiction.<sup>15</sup> Although Section 2(a)(1)(B)(ii) of the Act provides that the Commission shall not designate a board of trade as a contract market in a futures on a securities index unless the Commission finds that the board of trade meets three enumerated criteria,<sup>16</sup> Congress understood that a foreign board of trade would not necessarily have to obtain contract designation in order to offer futures contracts on stock indexes. Thus, the House Committee on Agriculture suggested that a foreign board of trade could apply for "certification" that its stock index contract meets all applicable Commission requirements. H.R. Rep. No. 565, Part 1, 97th Cong., 2d Sess. 85 (1982). That Committee further explained that a foreign board of trade seeking to offer and to sell, to persons located in the United States, a futures contract based upon an index of United States securities must demonstrate that the proposed futures contract meets the requirements set forth in Section 2(a)(1)(B)(ii). Id. With regard to a foreign exchange traded futures contract based on "foreign securities," the House Committee suggested that the Commission use such criteria as it deems appropriate.

The Commission has not promulgated procedures for foreign boards of trade filing requests to offer or to sell such contracts, but instead its staff has issued "no-action" letters<sup>17</sup> regarding foreign

<sup>15</sup> Section 2(a)(1)(A), 7 U.S.C. 2 (1982); 120 Cong. Rec. 34497 (1974) (statement of Senator Talmadge) (the terms "any other board of trade, exchange, or market" in Section 2(a)(1)(A) make clear the Commission's exclusive jurisdiction includes futures contracts executed on a foreign board of trade, exchange or market).

<sup>16</sup> These three criteria in Section 2(a)(1)(B)(ii) are:

- (1) The contract must provide for cash settlement;
- (2) The proposed contract will not be readily susceptible to manipulation or to being used to manipulate any underlying security; and
- (3) The index is predominately composed of the securities of unaffiliated issuers and reflects the market for all publicly traded securities or a substantial segment thereof.

<sup>17</sup> A no-action letter is a written statement issued by the staff of a specific division of the Commission or the Office of the General Counsel that it will not recommend enforcement action to the Commission if a proposed transaction is completed or a proposed activity is conducted by the beneficiary. A no-action letter represents the position only of the division that issued it, or the Office of the General Counsel if issued thereby. A no-action letter binds only the issuing division or the Office of the General Counsel, as applicable, and not the Commission or other Commission staff. Further, a

<sup>13</sup> In its comments to the proposed rulemaking, CBT reasserts the arguments it made in a proceeding instituted by the Commission under Section 5a(a)(10) of the Act concerning the delivery specifications for CBT's corn and soybeans futures contracts. See, 62 FR 60831 (November 13, 1997) (Commission Order changing and supplementing under Section 5a(a)(10) of the Act delivery terms of the CBT's corn and soybeans futures contracts). The Commission's determination in that proceeding was based on the application of the standards of Guideline No. 1 and Section 5a(a)(10) of the Act to the particular facts of those markets. The clarification of Guideline No. 1 as proposed is independent of its specific determination in that proceeding.

<sup>14</sup> Only product meeting the specified quality standards (e.g., the grade, age, purity, weight, etc. for tangible commodities or the issue, maturity, rating, etc. for financial instruments) is eligible for delivery on a futures contract and should be considered as part of the deliverable supply.

stock index contracts based on foreign securities using the criteria set forth in Section 2(a)(1)(B)(ii) of the Act. As of March 16, 1999, such action has been taken for 24 stock index contracts for offer or sale to persons located in the U.S. submitted by 15 foreign boards of trade.<sup>18</sup>

As detailed in the notice of proposed rulemaking at 63 FR 38540, the staff has analyzed such requests for a "no-action" opinion under the requirements of Section 2(a)(1)(B)(ii) of the Act. Accordingly, the staff has requested that the foreign board of trade file information that the staff deems relevant to those criteria. To facilitate the staff's review of such requests by foreign boards of trade, the Commission is adding, as proposed, a separate appendix to Part 5 enumerating the information that foreign boards of trade should file with the Commission to assist in the staff's analysis of such requests. Some of the data which should be included are: the terms and conditions of the contract and all other relevant rules of the exchange; information on information sharing arrangements or any legal obstacles to such sharing of information; and specific information related to the composition and computation of the index. All information should be submitted in English, including any supplemental material such as explanatory notes, appended tables or charts. It should be noted that, in particular instances, the Commission consults with the Securities and Exchange Commission (SEC) regarding these contracts. When such consultation occurs, the SEC may request additional information.

### III. Related Matters

#### A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of those rules on small entities. The Commission has previously determined

no-action letter is only effective with respect to the person or persons to whom it was issued. Commission Rule 140.99. See, 63 FR 68175 (December 10, 1998).

<sup>18</sup> These 15 foreign boards of trade include: (1) Osaka Securities Exchange; (2) Tokyo Stock Exchange; (3) Hong Kong Futures Exchange; (4) Singapore International Monetary Exchange, Ltd.; (5) Toronto Futures Exchange; (6) International Futures Exchange (Bermuda), Ltd.; (7) London International Financial Futures and Options Exchange Limited; (8) Marche a Terme International de France; (9) Sydney Futures Exchange Limited; (10) Meff Sociedad Rectora de Productos Financieros Derivados de Renta Variable, S.A. (Spain); (11) Deutsche Terminborse; (12) Italian Stock Exchange; (13) The Amsterdam Exchanges; (14) OMLX, The London Securities and Derivatives Exchange, Ltd.; and (15) OM Stockholm AB.

that contract markets are not "small entities" for purposes of the RFA, 5 U.S.C. 601 *et seq.* 47 FR 18618 (April 30, 1982). These final amendments establish alternative streamlined procedures for Commission review and approval of contract market designation applications and of amendments to contract terms and conditions.

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

#### B. Paperwork Reduction Act

When publishing final rules, the Paperwork Reduction Act ("PRA") of 1995 {Pub. L. 104-13 (May 13, 1995)} imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as the PRA defines. In compliance with the Act, these final rules inform the public of:

(1) The reason the information is planned to be and/or has been collected; (2) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency; (3) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden); (4) whether responses to the collection of information are voluntary, required to obtain or retain a benefit or mandatory; (5) the nature and extent of confidentiality to be provided, if any; and (6) the fact that any agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Commission previously submitted this rule and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with this rule on October 24, 1998, and assigned OMB control number 3038-0022 to the rule. The burden associated with this entire collection (3038-0022) including this final rule, is as follows:

*Average burden hours per response:* 3,609.

*Number of Respondents:* 15,693.

*Frequency of response:* on Occasion.

The burden associated with this specific rule is as follows:

*Average burden hours per response:* 58.

*Number of Respondents:* 11.

*Frequency of response:* on Occasion.

Person wishing to comment on the information this final rule requires should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418-5160.

Copies of the OMB-approved information collection package associated with this rulemaking may be obtained from Desk Officer, Commodity Futures Trading Commission, Office of Management and Budget, Room 10202, NEOB Washington, D.C. 20503, (202) 395-7340.

#### List of Subjects in 17 CFR Part 5

Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and particular sections 4c, 5, 5a, 6 and 8a, 7 U.S.C. 6c, 7, 7a, 8, and 12a, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations by amending Part 5 as follows:

#### PART 5—DESIGNATION OF AND CONTINUING COMPLIANCE BY CONTRACT MARKETS

1. The authority citation for Part 5 continues to read as follows:

**Authority:** 7 U.S.C. 6c, 7, 7a, 8 and 12a.

2. In Part 5, Appendix A is revised to read as follows:

#### Appendix A to Part 5—Guideline No. 1; Interpretative Statement Regarding Economic and Public Interest Requirements for Contract Market Designation

##### (a) Application for Designation of Physical Delivery Futures Contracts

A board of trade shall submit:

(1) The rules setting forth the terms and conditions of the futures contract.

(2) A description of the cash market for the commodity on which the contract is based.

(i) The description may include, in addition to or in lieu of materials prepared by the board of trade, existing studies by industry trade groups, academics, governmental bodies or other entities, reports of consultants, or other materials which provide a description of the underlying cash market.

(ii) Where the same, or a closely related commodity, is already designated as a contract market which and is not dormant, the cash market description can be confined to those aspects relevant to particular term(s) or condition(s) which differ from such existing contract.

(3) A demonstration that the terms and conditions, as a whole, will result in a deliverable supply such that the contract will not be conducive to price manipulation or distortion and that the deliverable supply

reasonably can be expected to be available to short traders and salable by long traders at its market value in normal cash marketing channels.

For purposes of this demonstration, provide the following information in chart or narrative form.

CONTRACT TERMS AND CONDITIONS

Term or condition	Exchange proposal	Rule number of identical approved provision, if any <sup>1</sup>	Explanation as to consistency with, or reason for variance from cash market practice
1. Commodity characteristics (e.g., grade, quality, weight, class, growth, issuer, origin, maturity, source, rating, etc.)			
2. Any quality differentials for nonpar deliveries, or lack thereof			
3. Delivery points/region			
4. Any locational differentials for nonpar deliveries, or lack thereof			
5. Delivery facilities (type, number, capacity, ownership)			
6. Contract size and/or trading unit			
7. Delivery pack or composition of delivery units			
8. Delivery instrument (e.g., warehouse receipt, shipping certificate, bill of lading)			
9. Transportation terms (e.g., FOB, CIF, prepay freight to destination)			
10. Delivery procedures			
11. Delivery months			
12. Delivery period and last trading day			
13. Inspection/certification procedures (verification of delivery eligibility, any discounts applied for age)			
14. Minimum price change (tick) equal to or less than cash market minimum price increment			
15. Daily price limit provisions (note relationship to cash market price movements)			

DELIVERABLE SUPPLIES<sup>2</sup>—ESTIMATE OF DELIVERABLE SUPPLIES FOR TRADING MONTH(S) WITH LOWEST SUPPLIES

ESTIMATION METHODOLOGY			

<sup>1</sup> If an identical provision has been approved for a nondormant contract in the same commodity, there is no need to provide an explanation in the next column.

<sup>2</sup> No estimate of deliverable supply is needed if a previously designated nondormant contract is trading. Also, no justification of the spot month limit is needed if the limit is the same as that approved by the Commission for an identical contract in that commodity (relative to the quantity or value of the identical contract). Where more than one contract is based on the same underlying commodity or instrument, positions should be combined for purposes of applying speculative limits.

TERMS AND CONDITIONS RELATED TO SPECULATIVE LIMITS

Speculative limit	Standard	Level (exchange rule)
1. Spot month	No greater than one-fourth of estimated deliverable supply	
2. Nonspot individual month or all months combined (financial and energy contract).	5,000 contract	
3. Nonspot individual month or all months combined (tangible commodity contracts).	1,000 contracts	
4. Reporting level	Equal to or less than levels specified in CFTC rule 15.03	
5. Aggregation rule	Same as CFTC rule 150.5(g) or previously approved language.	

(4) As specifically requested, such additional evidence, information or data relating to whether the contract meets, initially or on a continuing basis, any of the specific requirements of the Act, including the public interest standard contained in Section 5(7) of the Act, and whether the contract reasonably can be expected to be, or has been, used for hedging and/or price basing on more than an occasional basis, or any other requirement for designation under the Act or Commission rules and policies.

(b) Application for Cash Settled Futures Contracts

A board of trade shall submit:

(1) The rules setting forth the terms and conditions of the proposed futures contract.

(2) A description of the cash market for the commodity on which the contract is based.

(i) The description may include, in addition to or in lieu of materials prepared by the board of trade, existing studies by industry trade groups, academics, governmental bodies or other entities, reports of consultants, or other materials which provide a description of the underlying cash market.

(ii) Where the same, or a closely related commodity, is already designated as a contract market which is not dormant, the cash market description can be confined to

those aspects relevant to particular term(s) or condition(s) which differ from such existing contract.

(3) A demonstration that cash settlement of the contract is at a price reflecting the underlying cash market, will not be subject to manipulation or distortion, and is based on a cash price series that is reliable, acceptable, publicly available and timely.

For purposes of this demonstration, provide the following information in chart or narrative form.

CONTRACT TERMS AND CONDITIONS

Term or condition		Rule number of identical approved provision, if any <sup>1</sup>	Explanation as to consistency with, or reason for variance from, cash market practice
1. Commodity characteristics (e.g., grade, quality, weight, class, growth, issuer, maturity, source, rating, etc.) .....	.....	.....	.....
2. Delivery months, noting any cyclical variations in trading activity that may affect the potential for manipulating the cash settlement price .....	.....	.....	.....
3. Last trading day .....	.....	.....	.....
4. Contract size .....	.....	.....	.....
5. Minimum price change (tick) .....	.....	.....	.....
6. Daily price limit provisions, relative to cash market price movements.	.....	.....	.....

<sup>1</sup> If an identical provision has been approved for a nondormant contract in the same commodity, there is not need to provide an explanation in the next column.

TERMS AND CONDITIONS RELATED TO CASH SETTLEMENT PRICE SERIES

Requirement	Rule number of identical approved provision	Explanation or justification
1. Where an independent third party calculate the cash settlement price series, evidence that the third party does not object to its use and provides safeguards against susceptibility to manipulation .....	.....	.....
2. Where board of trade generates cash settlement price series, specifications of calculation procedure and safeguards in cash settlement process to protect against susceptibility to manipulation (e.g., if self-generated survey, polling sample representative of cash market, but with a minimum of 4 non-trading entities or 8 entities that trade for own account) .....	.....	.....
3. Procedure for, and timeliness of, dissemination to public .....	.....	.....
4. Evidence that price is reliable indicator of cash market values and acceptable for hedging .....	.....	.....

TERMS AND CONDITIONS RELATED TO SPECULATIVE LIMITS

Speculative limit	Standard	Level (exchange rule)
1. Spot month .....	Must be no greater than necessary to minimize the potential for manipulation or distortion of the contract's or the underlying commodity's price.	.....
2. Nonspot individual month or all months combined (financial and energy contracts).	5,000 contracts .....	.....
3. Nonspot individual month or all months combined (tangible commodity contracts).	1,000 contracts .....	.....
4. Reporting level .....	Equal to or less than levels specified in CFTC rule 15.03 ...	.....
5. Aggregation rule .....	Same as CFTC rule 150.5(g) or previously approved language.	.....

(4) As specifically requested, such additional evidence, information or data relating to whether the contract meets, initially or on a continuing basis, any of the specific requirements of the Act, including the public interest standard contained in Section 5(7) of the Act, and whether the contract reasonably can be expected to be, or has been, used for hedging and/or price basing on more than an occasional basis, or any other requirement for designation under the Act or Commission rules and policies.

(c) Application for Option Contracts

A board of trade shall submit:

(1) The rules setting forth the terms and conditions of the proposed option contract.

(2)(i) For options on futures contracts, the terms and conditions of the proposed or existing underlying futures contract.

(2)(ii) For options on physical commodities:

(A) A description of the cash market for the commodity on which the contract is based.

(1) The description may include, in addition to or in lieu of material prepared by the board of trade: existing studies by industry trade groups, academics, governmental bodies or other entities; promotional or marketing materials prepared

by or for the board of trade; reports of consultants; or other materials which provide a description of the underlying cash market.

(2) Where the same, or a closely related commodity, is already designated and is not dormant, the cash market description can be confined to those aspects relevant to particular term(s) or condition(s) which differ from such existing contract.

(B) Depending on the method of settling the option, the relevant chart for either a physical delivery or cash settled futures contract.

(3) The following completed chart.

TERMS AND CONDITIONS

Criterion	Applicable CFTC Rule (17 CFR)	Standard	Met by exchange rule number	Justification for not meeting standard, or rule number of identical approved rule
1. Speculative limits .....	150.5 .....	Combined net position in futures and options on a futures-equivalent basis at the futures position levels, with inter-month spread exemptions that are consistent with those of the futures contracts or consistent with Commission Rule 150.5(e) for underlying future.	.....	.....
2. Aggregation rule .....	150.4 .....	Same as Rule 150.5(g) or previously approved language.	.....	.....
3. Reporting level .....	15.00(b)(2) .....	50 contracts or fewer .....	.....	.....
4. Strike prices (number listed & increments).	33.4(b)(1) .....	Procedures for routine listing of strikes are specified and automatic, provisions for listing discretionary strikes are specified.	.....	.....
5. Option expiration & last trading day.	33.4(b)(2) .....	Except for options on cash-settled futures contracts, expiration is not less than one business day before the earlier of the last trading day or the first notice day of the underlying future.	.....	.....
6. Minimum tick .....	33.4(d) .....	Equal to, or less than, the underlying futures tick	.....	.....
7. Daily price limit, if specified.	33.4(d) .....	Equal to, or greater than, the underlying futures price limit.	.....	.....

(4) As specifically requested, such additional evidence, information or data relating to whether the contract meets, initially or on a continuing basis, any of the specific requirements of the Act, including the public interest standard contained in Section 5(7) of the Act, or any other requirement for designation under the Act or Commission rules and policies.

3. Part 5 is amended by adding new Appendix E to read as follows:

**Appendix E—Information That a Foreign Board of Trade Should Submit When Seeking No-Action Relief to Offer and Sell, to Persons Located in the United States, a Futures Contract on a Foreign Securities Index Traded on That Foreign Board of Trade**

A foreign board of trade seeking no-action relief to offer and to sell, to persons located in the U.S., a futures contract on a foreign securities index traded on that foreign board of trade should submit the following in English:

(1) The terms and conditions of the contract and all other relevant rules of the exchange and, if applicable, of the exchange on which the underlying securities are traded, which have an effect on the over-all trading of the contract, including circuit breakers, price limits, position limits or other controls on trading;

(2) Surveillance agreements between the foreign board of trade and the exchange(s) on which the underlying securities are traded;

(3) Information sharing agreements between the host regulator and the Commission or assurances of ability and willingness to share information with the Commission and assurances from the foreign board of trade of its ability and willingness to share information with the Commission, either directly or indirectly.

(4) When applicable, information regarding foreign blocking statutes and their impact on the ability of United States government

agencies to obtain information concerning the trading of such contracts; and

(5) Information and data denoted in U.S. dollars relating to:

(i) The method of computation, availability, and timeliness of the index;

(ii) The total capitalization, number of stocks (including the number of unaffiliated issuers if different from the number of stocks), and weighting of the stocks by capitalization and, if applicable, by price in the index;

(iii) Breakdown of the index by industry segment including the capitalization and weight of each industry segment;

(iv) Procedures and criteria for selection of individual securities for inclusion in, or removal from, the index, how often the index is regularly reviewed, and any procedures for changes in the index between regularly scheduled reviews;

(v) Method of calculation of the cash-settlement price and the timing of its public release;

(vi) Average daily volume of trading by calendar month, measured by share turnover and dollar value, in each of the underlying securities for a six month period of time and, separately, the daily volume in each underlying security for six expirations (cash-settlement dates) or for the six days of that period on which cash-settlement would have occurred had each month of the period been an expiration month; and

(vii) If applicable, average daily futures trading volume.

Issued in Washington, D.C. this 25th day of May, 1999, by the Commodity Futures Trading Commission.

**Jean Webb,**

*Secretary of the Commission.*

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 173**

[Docket No. 97F-0450]

**Secondary Direct Food Additives Permitted in Food for Human Consumption; Boiler Water Additives**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of sorbitol anhydride esters, an emulsifier blend of sorbitan monostearate, polyoxyethylene (20) sorbitan monostearate (polysorbate 60), and polyoxyethylene (20) sorbitan monolaurate (polysorbate 20) as an anticorrosive agent in boilers where steam may contact food. This action is in response to a petition filed by Nalco Chemical Co.

**DATES:** This regulation is effective June 1, 1999; written objections and requests for a hearing by July 1, 1999. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in § 173.310 (21 CFR 173.310), effective June 1, 1999.

**ADDRESSES:** Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration,