

Examining the AD Docket

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List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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. The FAA amends § 39.13 by adding the following new AD:

2011–20–01 Empresa Brasileira de Aeronáutica S.A. (EMBRAER): Amendment 39–16810; Docket No. FAA–2011–0713; Directorate Identifier 2011–CE–023–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 31, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Empresa Brasileira de Aeronáutica S.A. (EMBRAER) Model EMB–505 airplanes, all serial numbers (SN) through 50500023, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 27: Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

It has been found the possibility of free-play between the mass balance weight and the elevator structure. This condition if not corrected could lead to elevator flutter and possible loss of airplane control.

Since this condition may occur in other airplanes of the same type and affects flight safety, a corrective action is required. Thus,

sufficient reason exists to request compliance with this AD in the indicated time limit.

The MCAI requires replacement of the bolts that attach the balance mass weights to the elevator structure.

Actions and Compliance

(f) Unless already done, within 12 calendar months after October 31, 2011 (the effective date of this AD), replace the bolts that attach the balance mass weights to the elevator structure following EMBRAER S.A. Phenom Service Bulletin No.: 505–55–0002, dated January 14, 2011.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: The MCAI applies to SN 50500004 through 50500023. This AD applies to all SN through 50500023.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; e-mail: jim.rutherford@faa.gov. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Related Information

(h) Refer to MCAI Agência Nacional De Aviação Civil—Brazil (ANAC) AD No.: 2011–

05–05, effective date June 16, 2011; and EMBRAER S.A. Phenom Service Bulletin No.: 505–55–0002, dated January 14, 2011, for related information. For service information related to this AD, contact EMBRAER S.A., Phenom Maintenance Support, Av. Brig. Faria Lima, 2170, Sao Jose dos Campos—SP, CEP: 12227–901—PO Box: 36/2, Brasil; telephone: ++55 12 3927–5383; fax: ++55 12 3927–2619; E-mail: Phenom.Reliability@Embraer.Com.Br; Internet: <http://www.embraer.com.br>. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Material Incorporated by Reference

(i) You must use EMBRAER S.A. Phenom Service Bulletin No.: 505–55–0002, dated January 14, 2011, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact EMBRAER S.A., Phenom Maintenance Support, Av. Brig. Faria Lima, 2170, Sao Jose dos Campos—SP, CEP: 12227–901—PO Box: 36/2, Brasil; telephone: ++55 12 3927–5383; fax: ++55 12 3927–2619; E-mail: phenom.reliability@embraer.com.br; Internet: <http://www.embraer.com.br>.

(3) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(4) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Kansas City, Missouri, on September 12, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–23768 Filed 9–23–11; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

RIN 3038–AC54

Foreign Futures and Options Contracts on a Non-Narrow-Based Security Index; Commission Certification Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (“Commission”) is adopting a new rule, which establishes a Commission certification procedure applicable to the offer or sale, to persons in the U.S., of a non-narrow-based security index futures contract traded on a foreign board of trade; the new certification procedure will replace the existing staff no-action process. Additionally, the new rule establishes a procedure for a foreign board of trade to request and receive a Commission certification on an expedited basis. Under this expedited procedure, a non-narrow-based security index futures contract of qualifying foreign boards of trade could be offered or sold in the U.S. forty-five (45) days after submission of such request, absent a notification by the Commission.

DATES: *Effective Date:* October 26, 2011.

FOR FURTHER INFORMATION CONTACT: Harold L. Hardman, Deputy General Counsel (Regulation), (202) 418–5120, hhardman@cftc.gov; Carlene S. Kim, Assistant General Counsel, (202) 418–5613, ckim@cftc.gov, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

Currently, a non-narrow-based security index futures contract (“foreign security index futures contract”) traded on, or subject to the rules of, a foreign board of trade may be offered or sold to persons located within the United States pursuant to a staff no-action letter confirming that the contract satisfies the requirements enumerated in section 2(a)(1)(C)(ii) of the Commodity Exchange Act (the “CEA” or “Act”) (such letter hereinafter referred to as a “Foreign Security Index No-Action Letter”).¹ On December 13, 2010, the Commission published in the **Federal Register** a proposal to adopt new rule 30.13, which would establish Commission certification procedures for confirming that a security index futures contract traded on a foreign board of trade meets the requirements of the Act and therefore, may lawfully be offered or sold within the U.S.² The Commission received six comment

letters in response to the Proposal.³ Three commenters, two foreign boards of trade and a proprietary capital management firm, expressed strong support for proposed rule 30.13.⁴

Eurex also recommended that the new rule provide for a foreign board of trade to list a new contract with prior notification, in lieu of filing a request for certification, in certain limited circumstances.⁵ To address such comment, the Commission is providing in rule 30.13 that a foreign board of trade may make available for offer or sale to U.S. customers a new contract in reliance upon a previously-issued Foreign Security Index No-Action Letter or Commission certification where the new contract is: (i) Based on an index that was the subject of such prior no-action relief or certification issued to that board; and (ii) “substantially identical” to the contract overlying such index.

B. Proposed Rule 30.13: Commission Certification Procedure

Rule 30.13 sets forth a procedure whereby a foreign board of trade may apply to the Commission for certification that a security index futures contract traded on, or subject to, that board conforms to the criteria enumerated in section 2(a)(1)(C)(ii) of the Act. The Commission certification procedure will be available to futures contracts based on a non-narrow-based index of foreign or U.S. securities.⁶ Under this new procedure, the foreign board of trade seeking Commission certification must file with the Commission a written submission requesting certification with respect to their security index futures contract(s). Such submission must include data, information, facts, and statements complying with the form and content requirements set forth in paragraph (a)(2) of rule 30.13.⁷ In addition, the

foreign board of trade also must provide a written statement that the subject contract conforms to section 2(a)(1)(C)(ii) of the Act. Finally, the foreign board of trade must describe the manner in which U.S. persons legally may access these products on that board of trade (e.g., access through omnibus accounts, through an intermediary, which is registered in the U.S. and also is an authorized member of the foreign board of trade, or through an entity that has relief from registration under part 30).⁸

The substantive review will remain the same under rule 30.13 as it is under the current staff no-action process. Further, consistent with the existing staff no-action review process the Commission’s review of the subject contract will not be subject to any specific time frame, except as noted below. If a contract is determined to conform to the applicable requirements of the Act, the Commission will so notify the foreign board of trade.⁹

Finally, foreign boards of trade that have received Foreign Security Index No-Action Letters prior to the effective date of rule 30.13 will be grandfathered, provided that the board submits a written statement representing that it remains fully compliant with the underlying conditions of the subject letter.¹⁰ Accordingly, a foreign board of

Specifically, the information required to be submitted would include: A copy of the contract’s terms and conditions; relevant rules that may have an effect on trading of the contract such as circuit breakers or position limits or other controls on trading; information and data relating to the index, including the design, computation and maintenance thereof. In addition, the foreign board of trade would be required to provide a copy of the surveillance agreement(s) between the foreign board of trade and the exchange(s) on which the underlying securities are traded and provide assurance of its ability and willingness to share information with the Commission. The Commission requests that the required data relating to the index, including the index components and their market capitalizations, index weights, and average daily trading volumes (by share and by dollar value) over a six month period, be submitted in a Microsoft Excel file with an extension of .xls or .xlsx, as appropriate. In this final rulemaking, Appendix D will be revised to retain only the information currently set forth in paragraph G of Appendix D.

⁸ While an index product may meet the statutory standard and is therefore eligible to be offered or sold in the U.S., U.S. customers’ access to such product may be restricted due to legal restrictions in the subject foreign jurisdiction.

⁹ Additionally, once the Commission has certified the subject futures contracts, no further action is required by the Commission or staff in order for options on such futures contract to be offered and sold in the United States. See 61 FR 10891, Mar. 18, 1996.

¹⁰ The Commission staff previously determined that such non-narrow-based foreign index contracts conformed to section 2(a)(1)(C)(ii) of the Act. Given that the substance of the review under the proposed Commission certification process would remain unchanged, the Commission believes it would be appropriate to “grandfather” these contracts.

³ Comments were submitted by Eurex Deutschland (“Eurex”); BM&FBovespa; INFINIUM Capital Management; and three private citizens.

⁴ The private individuals’ comments related to speculation in the futures markets and did not address the proposed rule.

⁵ Eurex’s comment is discussed in section I.D., *infra*.

⁶ See, e.g., CFTC Staff Letter No. 06–22 [2005–2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,366 (Sept. 26, 2006) (no-action relief granted with respect to futures contracts based on the Hang Seng Index and the Hang Seng China Enterprises Index, both of which are indices comprised wholly of foreign securities); CFTC Staff Letter No. 02–81 [2002–2003 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,094 (June 28, 2002) (no-action relief granted with respect to futures contracts based on the Dow Jones Global Titan Index, which is an index comprised partially of U.S. securities).

⁷ The data, information, facts, and statements required to be submitted will be the same as that specified in current Appendix D to part 30.

¹ U.S.C. 2(a)(1)(C)(ii). Such a contract also is referred to herein as “non-narrow-based security index futures contract” or “broad-based security index futures contract.”

² See 75 FR 77588, Dec. 13, 2010 (the “Proposal”).

trade that has received from Commission staff such no-action letters will be able to rely on such relief, in lieu of obtaining new Commission certification (for the contract that is the subject of that letter).

C. Expedited Review for Qualifying Foreign Boards of Trade

The new rule establishes a procedure for a foreign board of trade to request and receive a Commission certification on an expedited basis. This expedited procedure is an alternative to the regular review procedure and will be available to a foreign board of trade that has received a Foreign Security Index No-Action Letter or Commission certification with respect to a non-narrow-based security index futures contract traded on that board. Additionally, the expedited review will be available to a foreign board of trade that has received, and is compliant with the requirements of, the applicable staff no-action letter¹¹ permitting a foreign board of trade to offer U.S. traders with direct access to its trading system.¹²

As the Commission noted in the Proposal, the Dodd-Frank Wall Street Reform and Consumer Protection Act authorizes the Commission to register foreign boards of trade that provide U.S. persons with “direct access” to their trading systems.¹³ On November 19, 2010, the Commission proposed rules to implement the new statutory provision.¹⁴ The Commission anticipates that at such time as the Commission may adopt such registration requirements, the expedited review procedure would be extended to recipients of an FBOT registration license.

Under the expedited review procedure, a qualifying foreign board of trade may request that the Commission make its certification as to whether a

futures contract on a security index that it lists for trading, or plans to list for trading, on that board satisfies the requirements enumerated in section 2(a)(1)(C)(ii) of the Act within 45 days after the submission of such request. The review period could be extended by the Commission for an additional 45 days if the foreign security index futures contract raises novel or complex issues that require additional time for review, or if the foreign board of trade requests an extension of time.

If the foreign board of trade’s request to the Commission for expedited consideration does not comply in form or content with the requirements of proposed rule 30.13, the Commission may notify the requesting foreign board of trade and treat the request for expedited review as withdrawn. However, the foreign board of trade will not be precluded from filing a new expedited request, provided that such submission satisfies the content and form requirements applicable to such process specified in rule 30.13.

Unless the Commission notifies the foreign board of trade that the request has been deemed withdrawn, the subject contract will be deemed to be in conformance with the requirements of section 2(a)(1)(C)(ii) and, therefore may be offered or sold within the U.S., at the expiration of the applicable review period. In contrast to the regular, non-expedited review, the Commission will not issue a certification letter to the foreign board of trade upon completion of its review.

If the Commission will not, or is unable to, deem that the foreign security index futures contract or the underlying security index conforms to the requirements of the Act, it will so notify the foreign board of trade within the 45 day time period or such extended time frame, with a brief statement of the reasons. Upon such notification, the foreign board of trade’s request for Commission certification will be treated as having been withdrawn. The foreign board of trade, however, will not be precluded from filing a new submission, provided that such submission sufficiently addresses the deficiencies or issues identified in the Commission notification.¹⁵

¹⁵ Requests for staff no-action letters respecting foreign security index futures contracts that are currently pending or submitted prior to adoption of a final rule will be considered as a request for Commission certification following the adoption of § 30.13. Any foreign board of trade eligible for expedited review under any final rule adopted by the Commission would have to submit a request for such treatment.

D. Eurex Comments

Eurex states that the proposed Commission certification procedures focus on an index’s compliance with the standards for non-narrow security index trading. Therefore, Eurex recommends that only prior notification be required: (i) For any change in contract terms that do not relate to the composition of the index, such as index multiplier; or (ii) to list additional products based on an index for which a contract has been certified and whose terms differ from the original contract by the “size of the multiplier or other non-index related features.”¹⁶

As a preliminary matter, the Commission notes that under the current staff no-action process, the staff reviews the underlying index, as well as the terms and conditions of the overlying futures contract, and in particular those terms and conditions relating to cash settlement. In that regard, the staff examines, among other things, whether the cash price series is reliable, acceptable, publicly available and timely; that the cash settlement price is reflective of the underlying cash market; and that the cash settlement price is not readily susceptible to manipulation. In summary, although the staff review of foreign security index contracts may be focused primarily on the nature of the underlying index, it is not exclusively so. As noted above, the substantive review will remain the same under the new rule 30.13 as it is under the current no-action process.

The Commission also notes that under the existing staff no-action process, a foreign board of trade is required to notify the Commission of any material changes in facts or representations submitted in connection with the original request for relief; non-material changes to contract terms do not trigger any such notification requirement. Generally speaking, the Commission considers the following routine and non-material changes: (i) Changes in the composition, computation, or method of selection of component entities of an index referenced and defined in the contract’s terms; or (ii) changes that do not affect the pricing basis of the index, which are made by an independent third party whose business relates to the collection or dissemination of price formation and which was not formed solely for the purpose of compiling an index for use in connection with a futures or option product.

In response to Eurex’s comments and to further remove any unnecessary impediments to offerings of foreign

¹⁶ Letter from Eurex, to the Commission’s Office of the Secretariat (January 18, 2011).

¹¹ Since 1996, the Commission staff has issued no-action letters to foreign boards of trade stating, subject to compliance with certain conditions, that it will not recommend that the Commission take enforcement action if the foreign board of trade provides its members or participants in the U.S. access to its electronic trading system without seeking designation as a Designated Contract Market or registration as a Derivatives Transaction Execution Facility (“Foreign Board of Trade No-Action Letters”). To avail itself of the expedited review process, the FBOT must submit a written statement representing that it remains fully compliant with the terms and conditions of the applicable Foreign Board of Trade No-Action Letter.

¹² To avail itself of the expedited review process, the FBOT must submit a written statement representing that it remains fully compliant with the terms and condition of the applicable Foreign Board of Trade No-Action Letter.

¹³ Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

¹⁴ 75 FR 70974, Nov. 19, 2010.

security index contracts, the Commission is adding paragraph (m) to rule 30.13 to provide that a foreign security index futures contract may be offered or sold to U.S. customers in reliance on a previously-issued Foreign Board of Trade No-Action Letter or Commission certification, provided that the contract is: (i) Based on an index that was the subject of such prior certification or no-action relief; (ii) "substantially identical" to the contract underlying such index. In such case, the foreign board of trade may submit the contract to the Commission for an accelerated review of fifteen business days for confirmation that such contract is substantially identical to the relevant existing contract¹⁷ and thus may be offered or sold in the U.S. upon reliance of a previously-issued Foreign Security Index No-Action Letter or Commission certification. In making such submission, the foreign board of trade must provide an explanation of why the subject contract is substantially identical to a contract that was the subject of a prior Commission certification or Foreign Security Index No-Action Letter, together with information specified in § 30.13(a)(2)(v) to (vii). Unless the Commission notifies the foreign board of trade within the fifteen business days that the contract will be reviewed under either the full or expedited procedure, such contract may be offered or sold in the U.S. at the end of that 15 day period.¹⁸

II. Related Matters

A. Cost Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before issuing new regulations under the Act. Section 15(a) does not require the Commission to quantify the costs and benefits of new regulations or to determine whether the benefits of adopted regulations outweigh their costs. Rather, section 15(a) requires the Commission to consider the cost and benefits of the subject regulations. Section 15(a) further specifies that the costs and benefits of new regulations shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of the market for

listed derivatives; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular regulation is 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.

In the proposed rule, the Commission determined that there are no apparent new costs associated with proposed § 30.13. The proposed rule would codify and streamline the current review process, without substantive changes to the review standards and information required to be filed with respect to a broad-based security index. Accordingly, the Commission believes that the proposed review procedures would not compromise customer protection safeguards provided by the Act or in any way be contrary to the public interest. Additionally, foreign boards of trade and U.S. market participants will benefit from proposed § 30.13. The certification process being proposed will provide a foreign board of trade with greater certainty with respect to the contracts it offers in the U.S., which until now have only been subject to staff no-action relief that is not binding on the Commission. Moreover, the proposed expedited review process would enhance market efficiency by providing foreign boards of trade with greater certainty concerning the time necessary to obtain regulatory clearance in order to market broad-based security index products within the United States. Finally, streamlining the review process would make additional hedging instruments available to U.S. persons without unnecessary delay, and in turn, may foster price discovery in the futures market.

The Commission received no comments on the costs associated with this rulemaking, and two foreign boards of trade commented that the benefits to them would be significant.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of their regulations on small businesses. The Commission has previously determined that designated contract markets are not small entities for purposes of the RFA.¹⁹ The Commission's determination was based on considerations relating to the central

role played by contract markets in the futures market, as well as the high volume of transactions conducted on such markets.

To the extent that the RFA may apply to the action proposed to be taken herein, the Commission does not believe that a foreign board of trade falls within the definition of "small entity" for purposes of the RFA. Rather, the Commission is of the view that the rationale that guided its finding with respect to U.S. contract markets apply equally to foreign boards of trade. Moreover, with regard to foreign firms, the RFA defines a "small entity" as a "business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or uses American products, materials or labor."²⁰ A foreign board of trade that may seek Commission certification pursuant to the proposed rule is not likely to meet such criteria. In the proposed rule, the Commission solicited comments on this matter; no comment letter was submitted. Accordingly, pursuant to 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that the final rules promulgated herein will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

When publicizing proposed regulations, the Paperwork Reduction Act ("PRA") of 1995 (44 U.S.C. 3501 *et seq.*) imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The information collection requirements associated with the proposed regulations are administered under Office of Management and Budget control numbers 3038-0022 and 3038-0054. In the proposing release, the Commission stated that the proposed regulations would not impose any new or additional recordkeeping or information collection requirement that would require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* No comments were submitted on this matter. Accordingly, the PRA is inapplicable.

List of Subjects in 17 CFR Part 30

Advertising, Designated contract market, Fast-track, Foreign board of

¹⁷ For example, a contract that is identical to an existing contract except that it has a different contract multiplier would generally be able to rely on a previously-issued Foreign Security Index No-Action Letter or Commission certification.

¹⁸ This authority is delegated to the Director of the Division of Market Oversight in consultation with the General Counsel. See paragraph (o) of the rule.

¹⁹ See 47 FR 18618, Apr. 30, 1982.

²⁰ See 5 U.S.C. 601(6) (defining "small entity" to have the same term as the term "small business" as used under section 3 of the Small Business Act, 13 CFR 121.201).

trade, Foreign security index futures, No-action letter, Non-narrow foreign security index future, Reporting and recordkeeping requirements.

For the reasons set forth in the Preamble, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

■ 1. The authority citation for part 30 continues to read as follows:

Authority: 17 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

■ 2. Section 30.13 is added to read as follows:

§ 30.13 Commission certification.

With respect to foreign futures and options contracts on a non-narrow-based security index:

(a) *Request for certification.* A foreign board of trade may request that the Commission certify that a futures contract on a non-narrow-based security index that trades, or is proposed to be traded thereon, conforms to the requirements of section 2(a)(1)(C)(ii) of the Act and therefore, that futures contract may be offered or sold to persons located within the United States in accordance with section 2(a)(1)(C)(iv) of the Act. A submission requesting such certification must:

(1) Be filed electronically with the Secretary of the Commission;

(2) Include the following information in English:

(i) The terms and conditions of the contract and all other relevant rules of the exchange and, if applicable, of the foreign board of trade 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;

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

(iii) Assurances from the foreign board of trade of its ability and willingness to share information with the Commission, either directly or indirectly;

(iv) 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;

(v) Information and data denoted in U.S. dollars where appropriate (and the conversion date and rate used) relating to:

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

(B) 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 as well as the combined weighting of the five highest-weighted stocks in the index;

(C) 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;

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

(E) Average daily volume of trading, measured by share turnover and dollar value, in each of the underlying securities for a six-month period of time and, separately, the dollar value of the average daily trading volume of the securities comprising the lowest weighted 25% of the index for the past six calendar months, calculated pursuant to § 41.11 of this chapter; and

(vi) A written statement that the contract conforms to the criteria enumerated in section 2(a)(1)(C)(ii) of the Act, including:

(A) A statement that the contract is cash-settled;

(B) An explanation of why the contract is not readily subject to manipulation or to be used to manipulate the underlying security;

(C) A statement that the index is not a narrow-based security index as defined in section 1a(25) of the Act and the analysis supporting that statement;

(vii) A written representation that the foreign board of trade will notify the Commission of any material changes in any of the above information;

(viii) When applicable, a request to make the futures contract available for trading in accordance with the terms and conditions of, and through the electronic trading devices identified in, a Commission staff no-action letter stating, subject to compliance with certain conditions, that it will not recommend that the Commission take enforcement action if the foreign board of trade provides its members or participants in the U.S. access to its electronic trading system without seeking designation as a designated contract market (“Foreign Board of Trade No-Action Letter”), or pursuant to any foreign board of trade registration order issued by the Commission (“Foreign Board of Trade Registration Order”), and a certification from the foreign board of trade that it is in

compliance with the terms and conditions of that no-action letter or Foreign Board of Trade Registration Order; and

(ix) An explanation of the means by which U.S. persons may access these products on the foreign board of trade.

(b) *Termination of review.* The Commission, at any time during its review, may notify the requesting foreign board of trade that it is terminating its review under this section if it appears to the Commission that the submission is materially incomplete or fails in form or content to meet the requirements of this section.

(1) Such termination shall not prejudice the foreign board of trade from resubmitting a revised version of the contract, which addresses the deficiencies or issues identified by the Commission.

(2) The Commission shall also terminate review under this section if requested in writing to do so by the foreign board of trade.

(c) *Notice of denial of certification.* The Commission, at any time during its review under paragraph (a) of this section, may notify the requesting foreign board of trade that it has determined that the security index futures contract or underlying index does not conform with the requirements of section 2(a)(1)(C)(ii) of the Act.

(1) This notification will briefly specify the nature of the issues raised and the specific requirement of subsections 2(a)(1)(C)(ii)(I)–(III) of the Act with which the security index futures contract does not conform or to which it appears not to conform or the conformance to which cannot be ascertained from the submission.

(2) Such notification shall not prejudice the foreign board of trade from resubmitting a revised version of the contract, which addresses the deficiencies or issues identified by the Commission.

(d) *Notice of certification.* Upon review, if the Commission determines that the futures contract and the underlying index meet the requirements enumerated in section 2(a)(1)(C)(ii), the Commission will issue a letter to the foreign board of trade certifying that the security index contract traded on that board conforms to the requirements of section 2(a)(1)(C)(ii) of the Act and therefore, that futures contract may be offered or sold to persons located within the U.S. in accordance with section 2(a)(1)(C)(iv) of the Act and, if applicable, may be made available for trading in accordance with the terms and conditions of, and through the electronic trading devices identified in, the Foreign Board of Trade No-Action

Letter or the Foreign Board of Trade Registration Order.

(e) *Expedited review.* A foreign board of trade may request an expedited Commission review and determination of whether a futures contract on a security index that trades, or is proposed to be traded thereon, conforms to the requirements of section 2(a)(1)(C)(ii) of the Act and therefore, may be offered or sold to persons in the U.S. under section 2(a)(1)(C)(iv) of the Act. A submission requesting such expedited consideration should be filed in English with the Commission and should include: Information, statements and data complying with the form and content requirements in paragraph (a) of this section.

(f) *Eligibility for expedited review.* In order to qualify for expedited review under paragraph (e) of this section, the foreign board of trade must either:

(1) Have previously requested, and received, at least one no-action letter from the Office of General Counsel ("Foreign Security Index No-Action Letter") or Commission certification regarding a non-narrow based security index futures contract traded on that foreign board of trade and submit a written statement representing that the board remains fully compliant with the terms and conditions of such letter or certification; or

(2) Have received a Foreign Board of Trade No-Action Letter or Foreign Board of Trade Registration Order and submit a written statement representing that the board remains fully compliant with the terms and conditions of such letter or order.

(g) *Deemed to be in conformance.* Unless notified pursuant to paragraph (h), (i), or (j) of this section, any non-narrow-based foreign security index futures contract submitted for expedited review under paragraph (e) of this section shall be deemed to be in conformance with the requirements of section 2(a)(1)(C)(ii) of the Act and therefore, such futures contract may be offered or sold to persons located in the U.S. in accordance with section 2(a)(1)(C)(iv) forty-five days after receipt by the Commission, or at the conclusion of such extended period as described under paragraph (h) of this section, provided that the foreign board of trade does not amend the terms or conditions of the contract or supplement the request for expedited consideration, except as requested by the Commission or for correction of typographical errors. Any voluntary substantive amendment by the foreign board of trade will be treated as a new submission under this section.

(h) *Extension of review.* The Commission may extend the forty-five day review period set forth in paragraph (g) of this section for:

(1) An additional period up to forty-five days, if the request raises novel or complex issues that require additional time for review, in which case, the Commission will notify the foreign board of trade within the initial forty-five day review period and will briefly describe the nature of the specific issues for which additional time for review will be required; or

(2) Such extended period as the requesting foreign board of trade requests of the Commission in writing.

(i) *Termination of review.* The Commission, at any time during its review under paragraph (e) of this section or extension thereof as described under paragraph (h) of this section, may notify the requesting foreign board of trade that it is terminating its review under paragraph (e) of this section if it appears to the Commission that the submission is materially incomplete or fails in form or substance to meet the requirements of this section.

(1) Such termination shall not prejudice the foreign board of trade from resubmitting a revised version of the contract, which addresses the deficiencies or issues identified by the Commission.

(2) The Commission shall also terminate review under this section if requested in writing to do so by the foreign board of trade.

(j) *Notice of denial of certification.* The Commission, at any time during its review pursuant to paragraph (e), may notify the requesting foreign board of trade that it has determined that the security index futures contracts or underlying index does not conform with the requirements of section 2(a)(1)(C)(ii) of the Act.

(1) This notification will briefly specify the nature of the issues raised and the specific requirement of subsections 2(a)(1)(C)(ii)(I)–(III) of the Act with which the security index futures contract does not conform or to which it appears not to conform or the conformance to which cannot be ascertained from the submission.

(2) Such notification shall not prejudice the foreign board of trade from resubmitting a revised version of the contract, which addresses the deficiencies or issues identified by the Commission.

(k) *Foreign trading systems.* A foreign board of trade, who is a recipient of a Foreign of Trade No-Action Letter (and is compliant with the requirements of such letter) or Foreign Board of Trade Registration Order and is requesting

Commission certification of its non-narrow-based security index futures contract, may request that such contract submitted under paragraph (e) of this section be made available for trading under that letter or pursuant to the registration order, upon expiration of the applicable review period provided for under either paragraph (g) or (h) of this section. Absent Commission notification to the contrary, the foreign board of trade may make that contract available for trading on the Foreign Trading System upon expiration of the review period provided under paragraph (g) or (h) of this section.

(l) *Changes in facts and circumstances.* Any certification of a non-narrow based security index futures contracts submitted under paragraph (a) or (e) of this section shall be considered to be based on the facts and representations contained in the foreign board of trade's submissions to the Commission. Accordingly, the foreign board of trade shall promptly notify the Commission of any changes in material facts or representations.

(m) *Additional contracts on previously-reviewed index:* A new non-narrow-based security index futures contract may be offered or sold in the U.S. in reliance on a prior Foreign Security Index No-Action Letter or Commission certification, provided that the new contract is based on an index that was the subject of such Foreign Security Index No-Action Letter or Commission certification; and substantially identical to the contract overlying such index. In this context, the foreign board of trade may submit the contract to the Commission for an accelerated review of fifteen business days for confirmation that the subject contract is substantially identical to the existing contract. Unless the Commission notifies the foreign board of trade within those fifteen business days that the review will be conducted pursuant to either the full or expedited review procedure, the foreign board of trade may make available such contract for offer or sale within the U.S.

(n) *Grandfathered no-action letters.* Any non-narrow based security index futures contract that is the subject of an existing no-action letter issued by the Office of General Counsel, as of the date of the adoption of rule 30.13, shall be deemed to be in conformance with the criteria of section 2(a)(1)(C)(ii) of the Act, provided that the foreign board of trade submits a written statement representing that the contract remains fully compliant with the requirements of such letter.

(o) *Delegation.* The Commission hereby delegates, until such time as it

orders otherwise, to the Director of Market Oversight or his designee, in consultation with the General Counsel or his designee, the authority reserved to the Commission under paragraph (m) of this section. The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated pursuant to this paragraph (o).

■ 3. Appendix D to Part 30 is revised to read as follows:

Appendix D to Part 30—Commission Certification With Respect to Foreign Futures and Options Contracts on a Non-Narrow-Based Security Index

In its analysis of a request for certification by a foreign board of trade relating to a security index futures contract traded on that foreign board of trade pursuant to § 30.13, the Commission will evaluate the contract to ensure that it complies with the three criteria of section 2(a)(1)(C)(ii) of the Act.

(1) Because security index futures contracts are cash settled, the Commission also evaluates the contract terms and conditions relating to cash settlement. In that regard, the Commission examines, among other things, whether the cash price series is reliable, acceptable, publicly available and timely; that the cash settlement price is reflective of the underlying cash market; and that the cash settlement price is not readily susceptible to manipulation. In making its determination, the Commission considers the design and maintenance of the index, the method of index calculation, the nature of the component security prices used to calculate the index, the breadth and frequency of index dissemination, and any other relevant factors.

(2) In considering the susceptibility of an index to manipulation, the Commission examines several factors, including the structure of the primary and secondary markets for the component equities, the liquidity of the component stocks, the method of index calculation, the total capitalization of stocks underlying the index, the number, weighting and capitalization of individual stocks in the index, and the existence of surveillance sharing agreements between the board of trade and the securities exchange(s) on which the underlying securities are traded.

(3) To verify that the index is not narrow-based, the Commission considers the number and weighting of the component securities and the aggregate value of average daily trading volume of the lowest weighted quartile of securities. Under the Act, a security index is narrow-based if it meets any one of the following criteria:

- (i) The index is composed of fewer than 10 securities;
- (ii) Any single security comprises more than 30% of the total index weight;
- (iii) The five largest securities comprise more than 60% of the total index weight; or
- (iv) The lowest-weighted securities that together account for 25% of the total weight of the index have an aggregate dollar value of average daily trading volume of less than

US\$30 million (or US\$50 million if the index includes fewer than 15 securities).

Issued in Washington, DC, on September 16, 2011 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2011–24609 Filed 9–23–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 25, 173, 175, 177, 178, 182, and 184

[Docket No. FDA–2011–N–0011]

Environmental Impact Considerations, Food Additives, and Generally Recognized As Safe Substances; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending certain regulations regarding environmental impact considerations, food additives, and generally recognized as safe (GRAS) substances to correct minor errors in the Code of Federal Regulations (CFR). This action is editorial in nature and is intended to provide accuracy and clarity to the Agency's regulations.

DATES: This rule is effective October 3, 2011.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1256.

SUPPLEMENTARY INFORMATION: FDA is amending certain regulations in parts 25, 173, 175, 177, 178, 182, and 184 (21 CFR parts 25, 173, 175, 177, 178, 182, and 184). Minor errors were inadvertently published in the CFR affecting certain regulations regarding environmental impact considerations (part 25), food additives (parts 173, 175, 177, and 178), and GRAS substances (parts 182 and 184). This action makes the needed corrections.

The final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Publication of this document constitutes final action of these changes under the Administrative Procedure Act

(5 U.S.C. 553). These amendments are merely correcting nonsubstantive errors. FDA therefore, for good cause, finds under 5 U.S.C. 553(b)(3)(B) and (d)(3) that notice and public comment are unnecessary. The changes addressed in this document are as follows:

1. The Agency is correcting typographical errors. Two chemical names are corrected: Polytetrafluoroethylene in § 175.105 and dialkyl (C₈–C₁₈) dimethylammonium chloride in § 177.2600. Two chemical formulas are corrected: *N,N*-B-is(2-hydroxyethyl) alkylamine, where the alkyl groups (C₁₄–C₁₈) are derived from tallow in § 178.3130, and MnCl₂ in § 184.1446.

2. The Agency is also correcting five Chemical Abstract Service registry numbers (CAS Reg. Nos.) that are incorrectly listed: 123–93–5 in § 173.375, 1302–78–9 in § 184.1155, 7758–99–8 in § 184.1261, 10024–66–5 in § 184.1449, and 10025–69–1 in § 184.1845.

3. The Agency is updating citations. The two citations in 21 CFR 182.99 are updated to 40 CFR 180.910 and 40 CFR 180.920 due to a recent U.S. Environmental Protection Agency regulation. A citation in § 25.32 is updated. Section 25.32(p) refers to a petition pertaining to the label declaration of ingredients as described in § 101.103 (21 CFR 101.103). However, FDA revoked § 101.103 on June 3, 1996 (61 FR 27771 at 27779) because it duplicated the procedures in 21 CFR 10.30 for citizen petitions.

4. The Agency is amending tables in §§ 175.300 and 177.1210.

5. Finally, the Agency is updating § 184.1165. Under § 184.1165(a), both *n*-butane and iso-butane are described as odorless. However, the *Food Chemicals Codex*, 7th Edition (2010)¹ does not use the word “odorless” to describe the gases. Therefore, the Agency is amending its description by removing the word “odorless.”

List of Subjects

21 CFR Part 25

Environmental impact statements, Foreign relations, Reporting and recordkeeping requirements.

21 CFR Part 173

Food additives.

21 CFR Part 175

Adhesives, Food additives, Food packaging.

¹ *Food Chemicals Codex*, 7th Edition, pp. 115 and 529, Rockville, MD: United States Pharmacopeial Convention, 2010.