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Secretary of the Commission.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 5

Economic and Public Interest Requirements for Contract Market Designation

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: Commodity Futures Trading Commission (''Commission'') is proposing revisions to 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. The Commission recently promulgated fast-track review procedures to reduce the time for Commission review of such applications. In furtherance of these streamlining efforts, the Commission is proposing that Guideline No. 1 itself be revised to reduce any unnecessary burdens associated with the designation application.

Specifically, the Commission is proposing to reorganize Guideline No. 1 into several specific application forms, making use to the extent possible of a checklist or chart format. 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 is also proposing that a new appendix be added to Part 5 that would specify the information that should be included by a foreign board of trade seeking no-action relief to offer and to sell in the United States a futures contract on a securities index traded on that exchange.

DATES: Comments must be received by September 15, 1998.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, attention: Office of the Secretariat. Comments may be sent by facsimile transmission to (202) 418–5521 or, by e-mail to secretary@cftc.gov. Reference should be made to ''Revisions to Guideline No. 1.''

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Richard A. Shilts, Director, Market Analysis Section or Kimberly A. Browning, Attorney/Advisor, Division of Economic analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5260. E-mail: [PArchitzel@cftc.gov], [RShilts@cftc,gov] or [KBrowning@cftc.gov].

SUPPLEMENTARY INFORMATION:

I. Background

The requirement that boards of trade demonstrate that they meet specified conditions in order to be designated as a contract market 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).[1] Currently, the statutory requirements for 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 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).[2] 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.[3]

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). As revised in 1982, Guideline No. 1 was updated to address proposed innovations in the trading of futures contracts, including in particular, futures contracts on financial instruments and on various indexes and cash-settled futures contracts. Experience has demonstrated that the guideline has been adaptable and flexible, facilitating the designation of a wide range of innovative products.

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. Under the 1992 revisions, the standard of review for specified terms and conditions of proposed contract market designations under Sections 5 and 5a of the Act was clarified. Moreover, the 1992 revisions eliminated unnecessary and redundant materials by requiring that an application for designation of a futures contract include a cash-market description only when the proposed contract differs from a currently designated contract and that it need justify only individual contract terms that are different from terms which

[1] Designation as a contract market under the 1921 Act was contingent upon a board of trade's providing for the prevention of manipulative activity and the prevention of dissemination of false information, upon providing for certain types of recordkeeping and for admission into exchange membership of cooperative producer associations, and upon location of the contract market at a terminal cash market. *See,* §§ 5(a), (b), (c), (d) and (e) of the Futures Trading Act of 1921. Although the constitutionality of this Act was successfully challenged as an improper use of the Congressional taxing power in *Hill* v. *Wallace,* 259 U.S. 44 (1922), all subsequent legislation regulating the futures industry was patterned after this statutory scheme.

[2] The Act further requires, as a condition for contract market designation that the contract market, *inter alia:* be located at a terminal cash market or provide for terms and conditions as approved by the Commission (Section 5(1) of the Act); provide for various forms of recordkeeping (Sections 5(2) and 5a(a)(2) of the Act); permit the membership of cooperative associations (Section 5(5) of the Act); provide for compliance with Commission orders (Section 5(6) of the Act); submit its rules to the Commission (Sections 5a(a)(1) and 5a(a)(12) of the Act); provide that the terms of the contracts conform to United States commodity standards or those adopted by the Commission (Section 5a(a)(6) of the Act); accept warehouse receipts issued under United States law (Section 5a(a)(3) of the Act); and enforce exchange rules (Section 5a(a)(8) of the Act).

[3] 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.

previously have been approved by the Commission. 57 FR 3521.[4]

In addition, the 1992 revisions introduced the use of a new checklist-style format for applications for designation of option contracts. The checklist application for option contracts has reduced the required filing of redundant or otherwise unnecessary information, resulting in designation applications which are clearer and more concise. Presumably, the exchanges have thereby realized savings in both the time and costs associated with filing an application. Moreover, the uniform format has enabled the Commission to review such checklist applications in a more timely and efficient manner. Applications for designation of options on futures contracts, however, are uniquely amenable to such a checklist format because option contract terms tend to be highly uniform and the majority of issues arise in connection with the designation of the underlying futures contract.

In April 1997, new Commission Rule 5.1 establishing fast-track procedures for Commission review and approval of applications for contract market designation became effective. 62 FR 10434 (March 7, 1997). That rule 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 where needed and fulfillment of the Commission's oversight responsibilities. Under the fast-track review procedures, applications for designation of certain cash-settled futures and option contracts are deemed to be approved ten days after receipt, unless the exchange is notified otherwise. Certain other applications are deemed approved 45 days after receipt absent contrary notification. Since implementing fast-track review procedures in April 1997, 45 contracts have been approved by the Commission under this rule, 18 under the 10-day procedure and 27 under the 45-day procedure.[5]

The Commission, in 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.[6] 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 protection embedded in the Act. 61 FR 59390 (November 22, 1996).

II. Proposed Revisions to Guideline

A. Proposed Changes to the Guideline's Format

Based upon its experience in administering the current guideline and the new fast-track procedures, the Commission is proposing to revise Guideline No. 1 in several important respects. First, the Commission is proposing to streamline Guideline No. 1 by further reducing the required paperwork and by further clarifying the information required to be included. In this regard, as discussed above, the Commission has observed the success of the checklist application for option contracts implemented in 1992 and believes that a similar, but modified, framework using a chart rather than a checklist can be used for applications for designation of futures contracts.

Specifically, the Commission is proposing to reorganize the contents of the current 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, the requirements for each separate application are self-contained and include the information relevant to demonstrating compliance with the designation standards for that type of contract. The information required is largely the same as under the current guideline, but is presented in a clearer, more focussed format which includes the use of charts. Information for option contracts will continue to be provided by checklist. Moreover, the Commission is proposing to clarify certain standards for review which have envolved based upon administrative experience and to clarify that exchanges may fulfill the required cash-market description with information developed by third parties. The Commission intends to make this format available to the exchanges electronically and to encourage exchanges to file electronically to reduce further the paperwork burden associated with the application process. These proposed revisions are discussed in greater detail below.

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). The Commission is not proposing to amend this requirement—each application (except for options on futures) would still require the inclusion of such an overview. However, the Commission is proposing to amend Guideline No. 1 to recognize explicitly the acceptability of a variety of materials in fulfillment of this requirement. Under current practices, exchanges typically produce their own specific cash-market descriptions. The Commission notes, however, that the exchanges presently are not precluded from doing otherwise and that exchanges have on occasion submitted cash market descriptions which included third-party materials.[7]

To reduce the burden on the exchanges in satisfying the guideline's cash-market overview standards, the Commission is proposing to clarify that exchanges need not submit staff-prepared documents and that they may

[4] In conjunction with these revisions to the application for contract market designation, the Commission also modified many of its internal procedures to expedite the review and approval of new contracts and proposed amendments to existing contracts. These include, for example, a policy to notify the public of the availability of proposed contract terms for comment by publication in the **Federal Register** within one week of receipt of an application. In addition, under these procedures, substantive issues are identified and communicated informally to the exchange very shortly after receipt, permitting a prompt resolution. The review and approval of new contracts usually is completed shortly after the **Federal Register** public comment period ends or as soon as the exchange makes the modifications necessary to address a proposed contract's deficiencies. With these changes, the total review time for new contracts declined significantly.

[5] An additional 10 contracts were approved under non-fast-track review procedures. These included five equity index contracts, which were not eligible for fast-track approval because of the statutory requirement of review by the U.S. Securities and Exchange Commission (SEC), one contract that was approved under regular procedures before the end of the fast-track period, and four contracts that were processed under regular procedures at the request of the submitting exchange.

[6] 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.

[7] For example, some exchanges have submitted background studies on proposed contracts that were prepared by outside consultants.

submit cash-market descriptions based not only on materials generated by their staffs, but also on materials obtained from other sources. Such materials may be developed for an exchange by 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. In this regard, as proposed to be revised, Guideline No. 1 explicitly would state that a cash-market description may include:

Existing studies by industry trade groups, academics, governmental bodies or other entities; reports of consultations; or other materials which provide a description of the underlying cash market. These materials may be submitted in addition to, or in lieu of, information developed by the board of trade.

2. Charts Relating to Individual Contract Terms and Conditions

The current guideline requires exchanges to explain how each major term of a proposed contract, except for those identical to terms already approved by the Commission, is consistent with cash market practices or to justify the reason why the contract term appropriately is inconsistent with such practices. Exchanges submit this explanation or justification in narrative form. To further streamline the application process, the Commission is proposing that, in lieu of such a narrative description, an exchange may complete a chart to provide the required information. The proposed chart format will reduce the amount of verbiage and the overall length of designation applications.

The proposed chart is a template enumerating the significant contract terms and conditions typically contained in most contracts. In view of the diverse nature of commodities for which futures contracts may be developed, however, the template may be modified as necessary to reflect the nature of the particular commodity or the contract's specific terms and conditions. Also, to the extent that a proposed contract includes additional terms and conditions defining the economic characteristics of the underlying commodity, the board of trade may modify the form as appropriate. 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.''

The proposed chart would require that an exchange include 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 would be required when that term or condition is the same as one already approved by the Commission. For such contract terms, the board of trade should reference in column 2 of the chart the rule number or other description of the original approved provision.

In keeping with current requirements, the application also requires an exchange to specify and to justify speculative position limits as required under the criteria of Commission rule 1.61, 17 CFR 1.61. The Commission is proposing that this requirement also be fulfilled by completion of a chart. However, the Commission is reviewing generally its speculative position limit policies and may propose further revisions to this section of Guideline No. 1 if it becomes appropriate in light of subsequent revisions to its speculative position limit policies.

3. Clarification of Review Standards

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 proposing clarification of these requirements in the guideline.

i. 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. A 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 is implicit under the current guideline. The Commission is proposing to clarify this requirement by requiring explicitly designation applications include an estimate of deliverable supplies for the specified delivery months of a proposed contract.

Specifically, the Commission is proposing that applications for designation of physical delivery futures contracts include within a separate chart of 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 the delivery month(s) when potential supplies typically are at their lowest levels. The estimate should be based on statistical data when reasonably available covering an historical period 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 estimates are derived independently by the board of trade 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.

This estimate would be required to 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.[8] For a physical-delivery futures contract, therefore, 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 within a short period of time after a request for delivery and which is available for sale on a spot basis within the marketing channels that normally are tributary to the delivery point(s).

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

[8] Obviously, 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.

bonds typically may be held by the Federal Reserve System 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.

The spot-month speculative position limits should be set in relation to this deliverable supply estimate. Such spot-month speculative position limits should be no greater than one-quarter of the deliverable supply estimate for that month.[9]

ii. 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 would 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 two of the criteria which it has identified through past experience for meeting these requirements. In this regard, any cash settlement price which is determined by an exchange 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 would be required. These rule-of-thumb criteria have been included in the relevant chart.

B. Effect on Pending Applications

The proposed revision to Guideline No. 1 streamline the application process for designation of contract markets and clarify existing requirements and Commission practice. Because the Commission is not proposing any new substantive requirements, however, the Commission is permitting exchanges immediately to begin filing applications consistent with the proposed format. Moreover, because the Commission is permitting exchanges to continue providing the required information in a narrative format if they prefer, no application filed or already under development and nearing completion which complies with the existing guideline would have to be revised.

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 exchange is subject to the Commission's exclusive jurisdiction.[10] 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,[11] Congress understood that a foreign exchange might lawfully offer futures contracts on stock indexes absent designation. 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 exchange seeking to offer 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 stock index 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 the filing of requests by foreign boards of trade for ''certification'' to offer or to sell such contracts, but instead has issued through its Office of the General Counsel, several '' no-action'' letters [12] regarding foreign stock index contracts based on foreign securities using the criteria set forth in Section 2(a)(1)(B)(ii) of the Act. As of June 4, 1998, such action has been taken for 24 stock index contracts for offer or sale in the United States that were submitted by 15 foreign boards of trade.[13]

Generally, 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 which they deem relevant to those criteria. 57 FR 3518. To facilitate the staff's review of such requests by foreign boards of trade, the Commission is proposing that a separate appendix be added to Part 5 that would enumerate the information that foreign boards of trade should file with the Commission to assist in the staff's analysis of such requests. This information is the same as that previously requested to be filed. *Id.* 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

[9] The Commission believes that spot-month speculative position limits are not an ideal substitute for 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.

[10] 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).

[11] These three criteria are contained in Section 2(a)(1)(B)(ii). They 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.

[12] A no-action letter is a written statement that staff of a specific division will not recommend enforcement action to the Commission if a proposed transaction is undertaken or a proposed activity is conducted. A no-action letter represents the position of only the division issuing it and is binding upon that division and not on the Commission or other divisions. Further, a no-action letter is only effective with respect to the person or persons to whom it was issued and has no precedential effect.

[13] 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 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.

information should be submitted in English, including any supplemental material such as explanatory notes, appended tables or charts. It should be noted that the Commission consults with the SEC regarding these procedures. When such consultation occurs, additional information may be requested by the SEC.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of these rules on small entities. The Commission has previously determined 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 amendments propose to establish alternative streamlined procedures for Commission review and approval of applications by contract markets for designations 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. However, the Commission invites comments from any firms or other persons which believe that the promulgation of these rules might have a significant impact upon their activities.

B. Paperwork Reduction Act

When publishing proposed rules, the Paperwork Reduction Act (''PRA'') of 1995 {Pub. L. 104–13 (May 1, 1995)} 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. In compliance with the Act, the Commission, through this rule proposal, solicits comments to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection (3038–0022), including this proposed 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 proposed rule is as follows:

Average burden hours per response: 58
Number of Respondents: 11
Frequency of response: On Occasion

Persons wishing to comment on the information which would be required by this proposed rule 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 the 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 in particular sections 4c, 5, 5a, 6 and 8a, 7 U.S.C. 6c, 7, 7a, 8, and 12a, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations by amending Part 5 as follows:

PART 5—DESIGNATON OF AND CONTINUING COMPLIANCE BY CONTRACT MARKET

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 proposed to be 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 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 conditions(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*	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, consistent with the Commission's Policy on Price Differentials.			
3. Delivery Points/Region.			
4. Any locational differentials for nonpar deliveries, or lack thereof, consistent with the Commission's Policy on Price Differentials.			
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 frieght 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).			

*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.

Deliverable Supplies

Estimate of Deliverable Supplies for Trading Month(s) With Lowest Supplies	
Estimation Methodology:	

Speculative Limits

Speculative limit	Standard	Level (exchange rule)
1. Spot month	No greater than one-fourth of estimated deliverable supply	
2. Nonspot individual month and all months combined (financial and energy contracts)	5,000 contracts	
3. Nonspot individual month and 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.

(b) 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 conditions(s) which differ from such existing contract.

(3) A demonstration that cash settlement of the contract is at a price relfecting 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

Term or condition	Proposal	Rule number of identical approved provision, if any*	Explanation as to consistency with, or reason for variance from, cash market practice
1. Commodity characterisics (*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.			

*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.

CASH SETTLEMENT PRICE SERIES

Requirement	Rule number of identical approved provision	Explanation or justification
1. Where an independent third party calculates the cash settlement price series, evidence that the third party does not object to its use and provides safeguards against its susceptibility to manipulation. 2. Where board of trade generates cash settlement price series, specification 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 nontrading 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 is acceptable for hedging.		

SPECULATIVE LIMITS

Speculative limit	Standard	Level (exchange rule)
1. Spot month	Needed to minimize potential for manipulation if underlying cash market is small or trading is not highly liquid.	
2. Nonspot individual month and all months combined (financial and energy contracts).	5,000 contracts	
3. Nonspot individual month and 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 future 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 materials 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 conditions(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.

Criterion	Applicable CFTC rule (17 CFR)	Standard	Met by exchange rule number	Justification for not meeting standard, or rule number of identical approved rule
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 contract.		
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 listing strikes are specified and automatic.		
5. Option expiration & last trading day.	33.4(d)(1)	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 proposed to be 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 in the United States a Futures Contract on a Foreign Securities Index Traded on That Exchange

A foreign board of trade seeking no-action relief to offer and to sell in the United States a futures contract on a foreign securities index traded on that exchange should submit the following information 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 overall trading of the contract, including circuit breakers, price limits, position limits or other controls on trading;

(2) Surveillance agreements between the foreign boards 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 and assurances from the foreign exchange of its ability and willingness to share information with the Commission.

(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 unafiliated 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; and

(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.

Issued in Washington, D.C. this 13th day of July, 1998 by the Commodity Futures Trading Commission.

Jean Webb,

Secretary of the Commission.

[FR Doc. 98–19113 Filed 7–16–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6123–5]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona; Arizona Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the 1990 Clean Air Act (CAA), the Arizona Department of Environmental Quality (ADEQ) requested delegation of specific national emission standards for hazardous air pollutants (NESHAPs). In the Rules section of this **Federal Register**, EPA is granting ADEQ the authority to implement and enforce specified NESHAPs. The direct final rule also explains the procedure for future delegation of NESHAPs to ADEQ. EPA is taking direct final action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no relevant adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives relevant adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA