§ 36.1 Scope.
The provisions of this part apply to any board of trade or electronic trading facility that operates as:
(a) An exempt commercial market operating under:
(1) Until July 16, 2012, a grandfather relief order issued by the Commission pursuant to Section 723(c)(2)(B) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376 (2010)), or
(2) Any other applicable relief granted by the Commission; or
(b) An exempt board of trade operating under:
(1) Until July 16, 2012, a grandfather relief order issued by the Commission pursuant to Section 734(c)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376 (2010)), or
(2) Any other applicable relief granted by the Commission; or
§ 36.2 Exempt boards of trade.
(a) Eligible commodities. Commodities eligible to be traded by an exempt board of trade are:
(1) Commodities having—
(i) A nearly inexhaustible deliverable supply;
(ii) A deliverable supply that is sufficiently large, and a cash market sufficiently liquid, to render any contract traded on the commodity highly unlikely to be susceptible to the threat of manipulation; or
(iii) No cash market.
(2) The commodities that meet the criteria of paragraph (a)(1) of this section are:
(i) The commodities defined in section 1a(19) of the Act as “excluded commodities” (other than a security, including any group or index thereof or any interest in, or based on the value of, any security or group or index of securities); and
(ii) Such other commodity or commodities as the Commission may determine by rule, regulation or order.
(3) Such contracts must be entered into only between persons that are eligible contract participants, as defined in section 1a(18) of the Act and as further defined by the Commission, at the time at which the persons entered into the contract.
(b) Notification. Boards of trade operating as exempt boards of trade shall maintain on file with the Secretary of the Commission at the Commission’s Washington, DC headquarters, in electronic form, a “Notification of Operation as an Exempt Board of Trade,” and it shall include:
(1) The name and address of the exempt board of trade; and
(2) The name and telephone number of a contact person.
(c) Additional requirements—(1) Prohibited representation. A board of trade that meets the criteria set forth in this section and operates as an exempt board of trade shall not represent to any person that it is registered with, designated, recognized, licensed or approved by the Commission.
(2) Market data dissemination. (i) Criteria for price discovery determination. An exempt board of trade performs a significant price discovery function for transactions in the cash market for a commodity underlying any agreement, contract, or transaction executed or traded on the facility when:
(A) Cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the market on a more than occasional basis; or
(B) The market’s prices are routinely disseminated in a widely distributed industry publication and are routinely consulted by industry participants in pricing cash market transactions.
(ii) Notification. An exempt board of trade operating a market in reliance on the criteria set forth in this section shall notify the Commission when:
(A) It has reason to believe that cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on
§ 36.3 Exempt commercial markets.

(a) Eligible transactions. Agreements, contracts or transactions in an exempt commodity eligible to be entered into on an exempt commercial market must be:

(1) Entered into on a principal-to-principal basis solely between persons that are eligible commercial entities, as that term is defined in section 1a(17) of the Act, at the time the persons enter into the agreement, contract or transaction; and

(2) Executed or traded on an electronic trading facility.

(b) Notification. An electronic trading facility relying upon the exemption set forth in this section shall disseminate publicly, and on a daily basis, all of the following information with respect to transactions executed in reliance on the criteria set forth in this section:

(1) Contract terms and conditions, or a product description, and trading conventions, mechanisms and practices;

(2) Trading volume by commodity and, if available, open interest; and

(3) The opening and closing prices or price ranges, the daily high and low prices, a volume-weighted average price that is representative of trading on the board of trade, or such other daily price information as proposed by the board of trade and approved by the Commission.

(B) The exempt board of trade shall make such information readily available to the news media and the general public without charge no later than the business day following the day to which the information pertains.

(v) Modification of price discovery determination. An exempt board of trade that the Commission has determined performs a significant price discovery function under paragraph (c)(2)(iii) of this section may petition the Commission at any time to modify or vacate that determination. The petition shall contain an appropriate justification for the request. The Commission, after notice and opportunity for a hearing through the submission of written data, views and arguments, shall by order grant, grant subject to conditions, or deny such request.

(3) Annual certification. A board of trade operating as an exempt board of trade shall file with the Commission annually, no later than the end of each calendar year, a notice that includes:

(i) A statement that it continues to operate under the exemption; and

(ii) A certification that the information contained in the previous Notice of Operation as an Exempt Board of Trade is still correct.