Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. We are issuing this AD to detect and correct cracking of the fuselage skin, which could result in structural failure of the fuselage.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Maintenance Records Review

(f) Within 30 days after the effective date of this AD, review the airplane's maintenance records to determine if Tasks 532038–DVI–10000–1 and –2 of the BAE Systems (Operations) Limited BAe146/Avro RJ Maintenance Planning Document issued May 15, 2004, have been accomplished before the effective date of this AD. If review of the airplane's maintenance records cannot conclusively determine that Tasks 532038–DVI–10000–1 and –2 have been accomplished, do the detailed inspection specified in paragraph (g) of this AD at the applicable compliance time specified in paragraph (g)(1) or (g)(2) of this AD. If review of the airplane's maintenance records can conclusively determine that Tasks 532038–DVI–10000–1 and –2 have been accomplished, do the detailed inspection specified in paragraph (g) of this AD at the compliance time specified in paragraph (g)(3) of this AD.

Detailed Inspection and Corrective Action

(g) At the applicable compliance time specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD, do a detailed inspection of the external fuselage skin adjacent to the longeron at rib 0 from frame 29 to frame 31, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–177, dated June 29, 2004. If any damage is found during any inspection required by this AD, before further flight, repair in accordance with the service bulletin; except where the service bulletin specifies to repair with an approved BAE Systems (Operations) Limited repair scheme, before further flight, repair the damage according to a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority (or its delegated agent).

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Note 2: BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–177, dated June 29, 2004, refers to Supplemental Structural Inspection 53–20–138 of the BAE Systems (Operations) Limited BAe 146/Avro 146–RJ Maintenance Review Board Report, Revision 10, dated May 2004, as an additional source of service information for inspecting the external fuselage skin. The service bulletin also refers to the BAE Systems (Operations) Limited structural repair manual (SRM) as an additional source of service information for repairing certain damage.

(1) For airplanes on which Tasks 532038–DVI–10000–1 and –2 of the BAE Systems (Operations) Limited BAe146/Avro RJ Maintenance Planning Document issued May 15, 2004, have not been accomplished but that have accumulated 22,000 total flight cycles or less as of the effective date of this AD: Inspect before accumulating 22,000 total flight cycles or within 6 months after the effective date of this AD, whichever is later. Thereafter repeat the detailed inspection at intervals not to exceed 12,000 flight cycles.

(2) For airplanes on which Tasks 532038–DVI–10000–1 and –2 of the BAE Systems (Operations) Limited BAe146/Avro RJ Maintenance Planning Document issued May 15, 2004, have not been accomplished but that have accumulated more than 22,000 total flight cycles as of the effective date of this AD: Inspect before accumulating 24,000 total flight cycles or within 6 months after the effective date of this AD, whichever is first. Thereafter repeat the detailed inspection at intervals not to exceed 12,000 flight cycles.

(3) For airplanes on which Tasks 532038–DVI–10000–1 and –2 of the BAE Systems (Operations) Limited BAe146/Avro RJ Maintenance Planning Document issued May 15, 2004, have been accomplished before the effective date of this AD: Inspect within 12,000 flight cycles after the most recent inspection. Thereafter repeat the detailed inspection at intervals not to exceed 12,000 flight cycles.

No Reporting Requirement

(h) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(j) British airworthiness directive G–2005–0009, dated March 9, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–177, dated June 29, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_ of _federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 30, 2005.

Linda Navarro,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–181 Filed 1–11–06; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 36, 37, 38, 39 and 40

RIN 3038–AC23

Technical and Clarifying Amendments to Rules for Exempt Markets, Derivatives Transaction Execution Facilities and Designated Contract Markets, and Procedural Changes for Derivatives Clearing Organization Registration Applications

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: On August 10, 2001, the Commodity Futures Trading Commission (''Commission'') published final rules implementing the provisions of the Commodity Futures Modernization Act of 2000 (''CFMA'') relating to trading facilities.[1] These amendments are intended to clarify and codify acceptable practices under the rules for trading facilities, based on the Commission's experience over the intervening four years in applying those rules, including the adoption of several amendments to the original rules over the same period. The amendments also include various technical corrections and conforming amendments to the rules.

[1] 66 FR 42256, August 10, 2001.

In addition, these amendments revise the application and review process for registration as a derivatives clearing organization (''DCO'') by eliminating the presumption of automatic fast-track review of applications and replacing it with the presumption that all applications will be reviewed pursuant to the 180-day timeframe and procedures specified in Section 6(a) of the Commodity Exchange Act (''CEA'' or ''Act''). In lieu of the current 60-day automatic fast-track review, the Commission will permit applicants to request expedited review and to be registered as a DCO by affirmative Commission action not later than 90 days after the Commission receives the application.

DATES: *Effective Date:* February 13, 2006.

FOR FURTHER INFORMATION CONTACT: Donald Heitman, Senior Special Counsel (telephone 202–418–5041, e-mail *dheitman@cftc.gov*), Division of Market Oversight, or Lois Gregory, Special Counsel (telephone 202–418–5521, e-mail *lgregory@cftc.gov*), Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

The CFMA amended the Commodity Exchange Act to profoundly alter Federal regulation of commodity futures and option markets. The new statutory framework created by the CFMA established two categories of markets subject to Commission regulatory oversight, designated contract markets (''DCMs'') and registered derivatives transaction execution facilities (''DTEFs''), and two categories of exempt markets, exempt boards of trade (''EBOTs'') and exempt commercial markets (''ECMs''). The original rules applicable to these trading facilities [2] established administrative procedures necessary to implement the CFMA, interpreted certain of the CFMA's provisions, and provided guidance on compliance with various of the CFMA's requirements. In addition, the Commission, under the general exemptive authority of Section 4(c) of the Act, in a limited number of instances provided relief from, or greater flexibility than, the CFMA's provisions.

In addition, over the four years during which these new rules for trading facilities have been in effect, they have been amended several times.[3] These amendments are intended to clarify and codify acceptable practices under the Commission's rules for trading facilities, as amended, based on the Commission's experience in applying those rules over the last four years. The amendments also include a number of technical and clarifying corrections and conforming amendments to enhance the consistency and clarity of the rules.

It should also be noted that the Commission has provided information that may be helpful to those subject to the rules for trading facilities on its Web site at *http://www.cftc.gov.* In particular, the Web site includes charts setting out information that may be helpful in: (1) Complying with the registration criteria as a DTEF (see Appendix A to Part 37); (2) complying with the designation criteria as a DCM (see Appendix A to Part 38); and (3) complying with the requirements for designation of physical delivery futures contracts (see Appendix A to Part 40—Guideline No. 1). While these charts are not intended to be used as mandatory checklists, they may provide helpful guidance to those subject to the regulations governing trading facilities.

In addition, these amendments revise the application and review procedures for registration as a DCO. Specifically, the amendments eliminate the presumption of automatic fast-track review of applications and replace it with the presumption that all applications will be reviewed pursuant to the 180-day timeframe and procedures specified in Section 6(a) of the Act. In lieu of the automatic fast-track review (under which applicants were deemed to be registered as DCOs 60 days after receipt of an application), the amendments permit applicants to request expedited review and to be registered as a DCO by the Commission not later than 90 days after the date of receipt of the application. The amendments also provide that review under the expedited review procedures may be terminated if it appears that the application is materially incomplete, raises novel or complex issues that require additional time for review, or has undergone substantive amendment or supplementation during the review period. The amendments are based upon the Commission's experience in processing applications, including administrative practices that have been implemented since the rules were first adopted. These amendments establish procedures substantially similar, where appropriate, to those recently amended in Parts 37 and 38 for processing applications for registration of derivatives transaction execution facilities and contract market designation, respectively.[4]

II. The Comments

The Commission received a total of five comments, all from entities that are designated contract markets and/or derivatives clearing organizations, including the U.S. Futures Exchange, L.L.C.—Eurex U.S. (''Eurex''), the Minneapolis Grain Exchange (''MGEX''), the Chicago Mercantile Exchange (''CME''), the New York Mercantile Exchange (''NYMEX'') and the Chicago Board of Trade (''CBOT''). All of the commenters supported the Commission's efforts to clarify and update the Part 36–40 rules. However, the comments included various questions and suggestions regarding the interpretation and application of certain of the proposed amendments. In view of the limited number of comments, as well as the overlapping nature of some of the comments, and for the convenience of the reader, all of the comments and the Commission's responses will be discussed below in this section of the preamble.

NYMEX expressed concern about the proposed amendment to rule 38.2 to make clear that the references therein to the reserved provisions of the regulations applicable to DCMs ''also include related definitions and cross-referenced sections cited in those reserved provisions.'' NYMEX suggests that the provision could ''have the unintended effect of bringing back into force overly prescriptive regulations of the kind the CFMA was appropriately intended to eliminate.'' In particular, NYMEX notes that applying the definitions in § 1.63(a) to reserved § 1.63(c) would include the definition of ''disciplinary offense.'' That definition specifies that violations of SRO reporting or recordkeeping rules that result in fines aggregating more than $5,000 in any calendar year will be included among the disciplinary offenses that would disqualify a person from service on SRO governing boards, disciplinary committees and arbitration

[2] *Id.*

[3] See, for example: Regulation To Restrict Dual Trading in Security Futures Products, 67 FR 11223 (March 15, 2002); Changes in Divisional Structure and Delegations of Authority, 67 FR 62350 (October 7, 2002); Amendments to New Regulatory Framework for Trading Facilities and Clearing Organizations, 67 FR 62873 (October 9, 2002); Exempt Commercial Markets, 69 FR 43285 (July 20, 2004); Confidential Information and Commission Records and Information, 69 FR 67503 (November 18, 2004); and Application Procedures for Registration as a Derivatives Transaction Execution Facility or Designation as a Contract Market, 69 FR 67811 (November 22, 2004).

[4] 69 FR 67811, November 22, 2004.

or oversight panels. NYMEX points out that in January 2002, it submitted a self-certified rule, which the Commission did not disapprove, deleting a provision modeled after the $5,000 threshold approach set forth in § 1.63(a) and replacing it with a policy of reviewing potential disqualifications based on reporting/recordkeeping fines or settlements on a case-by-case basis. On July 12, 2005, NYMEX self-certified further amendments ''codifying the procedure by which reporting and recordkeeping violations resulting in cumulative fines of over $5,000 in a calendar year would be considered with regard to Board and disciplinary committee service.''

NYMEX contends that its procedures satisfy Core Principle 14, which requires DCMs to establish and enforce appropriate fitness standards for directors and disciplinary committee members. NYMEX argues that reimposing the $5,000 limit would deprive DCMs of the self-regulatory flexibility intended by the CFMA, affect NYMEX (which has ''greater representation from the floor community than some other DCMs'' on its board) unequally, and have a chilling effect on DCMs setting sanction levels high enough to promote compliance for fear of triggering consequences that would disrupt exchange governance. If the Commission does reimpose the $5,000 standard, NYMEX asks that it be applied only prospectively.

The Commission believes that the $5,000 limit in § 1.63(a) continues appropriately to reflect conduct that ''demonstrates a lack of respect for SRO rules sufficient to warrant [a] bar from service on SRO committees.'' [5] Therefore, the amendment to § 38.2 will be implemented as proposed. The Commission acknowledges, however, that it did not object to NYMEX's adoption of rules implementing a case-by-case review of reporting/recordkeeping disciplinary actions in lieu of the fine schedule in § 1.63(a). The Commission agrees that applying the § 1.63(a) fine schedule could be unfair to persons who, in agreeing to settle exchange disciplinary actions, acted in reliance on exchange rules that were at variance with that schedule. Therefore, the Commission will not bring action for violating § 1.63(a) against any NYMEX board, committee or arbitration panel member elected while a rule at variance with § 1.63(a) was in effect, in reliance on such rule, during the remainder of that person's current term of office, *provided* that the § 1.63(a) fine schedule will apply prospectively to all such individuals.

Two of the commenters expressed concern over proposed new § 38.5(c), which would delegate to staff the Commission's authority under revised § 38.5(b) to request additional information from a DCM demonstrating that it is in compliance with one or more designation criteria or core principles or that is requested by the Commission to satisfy its obligations under the Act. Eurex contends that regulation 38.5(b) and its permitting of compliance demonstration requests is patterned after former Commission regulation 1.50 and would be ''anything but a routine request.'' [6] Eurex suggests that responding to such a request ''is likely to place a very heavy (and costly) burden on an exchange.'' Thus, this authority should be reserved to the Commission. MGEX expressed concern that the proposed amendment indicates that exchanges ''can expect more frequent requests for information outside the routine [rule enforcement] review process,'' which could become an ''unnecessary regulatory burden.''

The amendments to §§ 38.5(b) and (c) are not intended to impose regulatory burdens on the exchanges, but rather to relieve administrative burdens on the Commission. The matters described in § 38.5(b) potentially cover a wide variety of possible written requests, from a routine request for details concerning a new exchange policy to a comprehensive inquiry regarding a potential exchange violation of designation criteria or core principles. In the case of the former, such routine requests are appropriately delegated to staff. In the case of the latter more significant requests, it should be noted that new § 38.5(c) both allows the Director of DMO to submit any matter delegated thereunder to the Commission and allows the Commission to exercise the authority directly. Accordingly, the Commission has determined to implement the amendments to §§ 38.5(b) and (c) as proposed.

In response to a comment by Eurex, the Commission wishes to make clear that in amending Appendix B to Part 38, Core Principle 2, to make clear that trade practice surveillance programs may be carried out by contracting-out to a third party (subject to appropriate supervision by the DCM), the Commission does not intend to preclude out-sourcing in other contexts, such as IT services, or even a trade matching platform. Of course, the DCM remains ultimately liable for compliance with the Act and Commission regulations. Thus, as noted above, it must retain appropriate supervisory authority in all such cases.

With respect to the proposed amendment to Appendix B, Part 38, Core Principle 7, regarding availability of general information to the public, CBOT states that it generally supports posting important information on its Web site promptly. However, CBOT expresses concern that the proposed requirement that the rulebook posted on the Web site must be current to within one day of implementation of a new or amended rule does not allow for staffing or system issues that could delay posting of a new rule. The CBOT suggests that, provided substantive rule changes are posted on the Web site within one day of implementation, through a press release, newsletter or notice, the Commission should allow five days for rule changes (including non-substantive, housekeeping changes) to be incorporated into the exchange's online rulebook. The Commission agrees with this point and has revised the relevant provision accordingly.

Three of the five commenters express opinions concerning the amendments to Part 39. CME and CBOT both support the revisions. CME states it believes the revisions will positively impact the futures markets by ensuring that the Commission and interested parties not only have access to all relevant information, but an ample opportunity to consider the implications of complex or novel issues. CBOT supports treating the time frames for review of DCO applications consistent with the time frames for review of DCM and DTEF applications.

Eurex expresses its concern that the amendments will result in unnecessary barriers to entry and adversely affect competition and innovation. Specifically, Eurex is concerned that a new entrant will lose flexibility if required to provide executed or executable contracts as part of its application. The language of the rule, which requires the submission of contracts entered or to be entered into, does not mean that contracts must be in force such that contract costs are being incurred before DCO registration or before the service for which the costs are incurred is supplied. Nevertheless, in light of this comment, the Commission has further clarified what is required in the language of the rule itself. The amended rule requires an applicant to submit agreements entered into or to be entered into between or

[5] 55 FR 7884 at 7885 (March 6, 1990).

[6] Regulation 1.50, ''Demonstration of continued compliance with the requirements for contract market designation,'' was used only in cases of significant issues of exchange compliance and the authority to invoke it was never delegated to the staff.

among the applicant, its operator/service provider or its participants that identify the services that will be provided that will enable the applicant to comply or demonstrate the applicant's ability to comply with the core principles specified in Section 5b(c)(2) of the Act. When the arrangement submitted is not final and executed, the rule also requires evidence that provides reasonable assurance that the agreed upon services will be provided when the operations that require the services begin. This may include evidence that the service provider is prepared to provide the services when they are needed and, to the extent not otherwise obvious, that the applicant has the financial resources to pay the fees required under the agreement.

Eurex also contends that procedural fairness requires a mechanism to hold staff accountable for a decision to terminate expedited review. The Commission notes that the Act does not establish any timeframe for review of DCO applicants. However, under Part 39, the Commission voluntarily committed itself to the timeframe under Section 6(a) and pursuant to § 39.3(g)(3), the Commission retains supervisory authority over staff decisions in this area.

NYMEX suggests that the definition of ''emergency'' in § 40.1 should be amended to make clear that the authority to declare an emergency is vested not only in a DCM's governing board, but also in ''a subcommittee or exchange official that is duly authorized under a DCM's rules to act with the governing board's authority in such circumstances.'' While the existing language may possibly be read to permit such an interpretation, the Commission believes that such an amendment may have merit in avoiding uncertainty. However, because nothing in the original Part 36–40 notice of proposed rulemaking provided notice that such an amendment was contemplated, the public was not given the opportunity to comment on it. Therefore, it would not be appropriate to include such an amendment in these final rules. However, the Commission may consider including such an amendment in a future rulemaking proposal.

Several exchanges commented on §§ 40.2(b), 40.3(a)(9) and 40.6(a)(4), all of which would make clear that registered entities shall provide, if requested by Commission staff, additional evidence, information or data relating to whether new products, rules or rule amendments meet the requirements of the Act or Commission regulations or policies thereunder. The preamble to the proposed rules noted that such evidence may be beneficial to the Commission in conducting due diligence assessments of such products and rules.

Eurex suggests that requests to demonstrate compliance with the Act should be more formally treated, pursuant to Rule 38.5, than requests for information related to routine due diligence reviews. Eurex notes that, ''the authority to request information, if misused, can constitute a significant burden on registered entities.'' MGEX expresses concern that staff requests for additional evidence, information or data under §§ 40.2(b) or 40.6(a) might have a ''chilling effect'' on the self-certification process. However, rather than oppose the amendments, the exchange urges the Commission staff to use this authority ''reasonably and judiciously.'' CBOT likewise expresses concern that routine requests for ''sometimes voluminous supporting data'' regarding self-certified contracts could have a ''chilling effect'' on listing products immediately after certification because an exchange may be hesitant to begin trading until it knows the Commission has requested any additional data and completed its review. CBOT asks the Commission to make clear that any requests for additional information under §§ 40.2(b) or 40.6(a), and any due diligence assessment by the Commission, ''is not intended implicitly or explicitly to operate as a stay'' with respect to listing self-certified products or implementing self-certified rules.

All of these comments reflect the need to balance the flexibility the CFMA gives a DCM in being able to self-certify new products and rules quickly against the obligations of both the DCM and the Commission to assure themselves that the certification is accurate—*i.e.*, that the product or rule does indeed comply with applicable designation criteria and core principles. It is certainly not the intention of the Commission or its staff to inject a chilling effect into the self-certification process or to conduct the required due diligence oversight of that process in anything less than a reasonable and judicious manner. Nor are such information requests intended to operate as a stay with regard to immediately listing new products or implementing new rules. The listing of a new product or implementation of a new rule may be stayed only during the pendency of a Commission proceeding for filing a false certification or to alter or supplement the contract terms or the rule under Section 8a(7) of the Act. Further, pursuant to §§ 40.2(c) and 40.6(b), respectively, the decision to impose such a stay rests with the Commission alone and cannot be delegated to the staff.

However, the fact remains that under the Act DCMs are responsible in the first instance, and the Commission is ultimately responsible in its oversight role, for assuring that DCM products and rules comply with applicable designation criteria and core principles. When a DCM self-certifies a product or rule it is, in effect, pledging that the product or rule does meet those standards. Assuming the DCM is acting in good faith, it must have some reasonable basis for making that pledge. Therefore, when reasonable questions arise, it should not be burdensome for the DCM to share information regarding the reasonable basis underlying the new product or rule with the Commission or its staff. Therefore, §§ 40.2(b), 40.3(a)(9) and 40.6(a)(4) will be implemented as proposed.

CBOT expressed concern about the proposed amendment to conform the review periods in § 40.3 (voluntary submission of new products for Commission review and approval) and § 40.5 (voluntary submission of rules for Commission review and approval). Both sections establish an initial review period of 45 days, with a possible additional extension. The proposed amendments provide for an extension of 45 days under § 40.5 (as opposed to the 30-day extension allowed under the current rules) to conform it to the 45-day extension period under § 40.3. CBOT points out that, when the proposed Part 40 rules were published in 2001, the Commission initially proposed a 45-day extension under § 40.5. In the final rules, however, the Commission lowered the period to the current 30 days after the CBOT commented that a 45-day extension period for rule reviews would have resulted in a potentially longer review process than that allowed under the pre-CFMA fast-track rule review procedure. CBOT argues that the reasons it expressed in favor of a 30-day extension period in 2001, and the reasons the Commission relied on in adopting such period, remain valid and recommends that the current 30-day extension period in § 40.5 should not be amended.

The Commission notes that new products generally include accompanying rule amendments. These new rules can raise questions just as complex, and requiring just as much additional review, as the new products to which they apply. Therefore, the review periods for both products and rules should be identical. It should also be noted that, based on actual experience, the effect of equalizing the review periods for products and rules

should be negligible since the extended review period is rarely invoked (only six times since the regulations were adopted in 2001). Therefore, the Commission has determined to implement the amendment to § 40.5 as proposed.

III. The Amendments

A. Part 36—Exempt Markets

Sections 36.2(b) and 36.3(a) are amended by deleting the reference to ''hard copy'' in the provisions requiring trading facilities operating as EBOTs and ECMs, respectively, to notify the Commission. In order to simplify and modernize the notification process, the amended rules require that such notifications be filed electronically. Similar amendments are made in other sections requiring notifications or filings with the Commission, so that under the amended rules, all formal filings from ECMs, EBOTs, DTEFs, DCMs and DCOs must be filed electronically.

Section 36.2(c)(2), relating to market data dissemination for EBOTs, is revised to implement price discovery/price dissemination rules for EBOTs that closely parallel those currently applicable to ECMs. The wording of the Act's price discovery/price dissemination provision for EBOTs is substantially similar to the provision applicable to ECMs and both provisions are identical in their ultimate purpose. Also, parallel provisions will be easier for the industry to apply, since the price discovery/price dissemination rules will be essentially identical for both types of exempt markets.

The amendments also add new §§ 36.2(c)(3) and 36.3(c)(4) requiring EBOTs and ECMs, respectively, to annually file a notice with the Commission, no later than the end of each calendar year. The notice must include a statement that the entity continues to operate under the exemption and a certification that the information in its original notification of operation is still correct. Annual notification of operation by the facility will allow the Commission to track whether facilities that notified the Commission of their intent to operate actually commenced operations and will allow the Commission to eliminate inactive facilities from any listing of active EBOTs or ECMs maintained on its Web site.

B. Part 37—Derivatives Transaction Execution Facilities

Section 37.1(a) is amended to make clear that the provisions of Part 37 apply not only to boards of trade operating as registered DTEFs, but also to applicants for registration as DTEFs.

Section 37.2 is revised to identify certain reserved provisions of the Commission's regulations that specifically and comprehensively reference DTEFs separately from other reserved provisions that do not. The revisions also make clear that all the references in § 37.2 to reserved provisions of the regulations applicable to DTEFs also include related definitions and cross-referenced sections cited in those reserved provisions. Finally, § 1.60 is added to the list of reserved provisions of the regulations applicable to DTEFs under § 37.2 to make clear that DTEFs need to notify the Commission of any material legal proceeding to which the DTEF is a party or to which its property or assets are subject.

In § 37.3, subparagraph (a)(5) is renumbered as subparagraph (b) and the remaining subparagraphs are renumbered accordingly.

Section 37.6, Compliance with Core Principles, is revised to harmonize DTEF core principle compliance with the previously noted new application procedures for DCMs and DTEFs.[7]

New § 37.6(c)(2) is added delegating to the Division of Market Oversight (the ''Division'') the authority under § 37.6(c)(1) to request additional information in reviewing a DTEF's continued compliance with one or more core principles, or to enable the Commission to satisfy its obligations under the Act. The delegation provides that the Commission, at its election, may exercise the delegated authority directly. A similar delegation is made in new § 38.5(c) to allow the Division to request additional information in reviewing a DCM's continued compliance with designation criteria and core principles, or to enable the Commission to satisfy its obligations under the Act. The foregoing delegated authority also extends to other requests by Commission staff to DTEFs or DCMs for additional information: (1) Under new § 40.2(b), regarding compliance with respect to new products listed by certification; (2) under § 40.3(a)(9), regarding voluntary submission of new products for Commission review and approval; and (3) under new § 40.6(a)(4), regarding compliance with respect to self-certified rules. This delegated authority will aid the staff in reviewing DTEF and DCM compliance with the requirements of the Act or Commission regulations or policies thereunder without involving the Commission in day-to-day oversight of trading facilities.

In addition, the guidance in current § 37.6(d) is deleted as duplicative of ''Appendix B to Part 37—Guidance on Compliance with Core Principles'' and replaced with a reference to Appendix B.

Section 37.8(b), regarding special calls for information, is amended to make clear that the section applies not only to futures commission merchants, but to foreign brokers (as defined in § 15.00) as well.

The title of Appendix A to Part 37 is reworded to read, ''Appendix A to Part 37—Guidance on Compliance with Registration Criteria,'' to be consistent with the wording of the titles of the other appendices to Parts 37 and 38. The introductory paragraph of the appendix also is revised to make clear that registration criteria guidance applies both to new registrants that register by application and to DTEFs operated by DCMs, which do not need to file an application, but can become registered by notification/certification. The revised language also is consistent with the requirement that the registration criteria must be met initially and on an ongoing basis, rather than just upon application.

In Appendix B to Part 37, subsection 1 of the appendix is revised to make clear that the guidance therein applies to all registered DTEFs, whether they come in by notification under § 37.5(a) or by application. Subsection 3 of the appendix is revised to make clear that, consistent with § 37.6(b)(2), the guidance therein applies to applicants for registration, rather than registered DTEFs.

Core Principle 5 of Appendix B to Part 37, ''Daily Publication of Trading Information,'' is revised in a manner consistent with the price discovery/price dissemination provisions applicable to EBOTs and ECMs, which are not as comprehensive as those applicable to DCMs. This reflects the fact that DTEFs are subject to a different informational standard than DCMs. DCMs are subject to a blanket requirement, under Core Principle 8 of Appendix B to Part 38, to publish daily trading information for all actively traded contracts. DTEFs, however, are subject to Core Principle 5 (Section 5a(d)(5) of the Act), which includes language similar to that applicable to EBOTs and ECMs (under Sections 5d(d) and 2(h)(4)(D) of the Act, respectively) requiring DTEFs to make public certain daily trading information only if the Commission determines that contracts traded on the facility perform a significant price discovery function for transactions in the cash market for the commodity underlying the contracts.

[7] 69 FR 67811 (November 22, 2004).

Thus, the revised core principle explanatory language applies to DTEFs the same standards that apply to EBOTs and ECMs (see §§ 36.2(b)(2) and 36.3(c)(2), respectively) whereby a DTEF performs a significant price discovery function if: (1) 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 (2) 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. If the Commission has reason to believe that a DTEF may meet either of these standards, or if the facility holds itself out to the public as performing a price discovery function, the Commission will notify the DTEF and provide it with an opportunity for a hearing through the submission of written data, views and arguments. If, after considering all relevant matters, the Commission finds that the DTEF meets the price discovery standards, it will direct the DTEF to publish daily trading information in accordance with the core principle. The information could be published by providing it to a financial information service or by placing it on the facility's Web site. The information should be made available to the public without charge no later than the business day following the day to which the information pertains.

C. Part 38—Designated Contract Markets

In § 38.1, language is added to make clear that the provisions of Part 38 apply to applicants for designation as well as to already designated contract markets, and redundant and inapplicable references are deleted.

In § 38.2, language is added to make clear that the references therein to reserved provisions of the regulations applicable to DCMs also include related definitions and cross-referenced sections cited in those reserved provisions. Similar clarifying amendments, reserving the applicability of related definitions and cross-referenced sections, appear in other sections of these final rules. Also, § 1.60 is added to the list of reserved provisions of the regulations applicable to DCMs under § 38.2 to make clear that DCMs need to notify the Commission of any material legal proceeding to which the DCM is a party or to which its property or assets are subject.

In § 38.5, subparagraph (b) is amended to make clear that DCMs are required to comply with the designation criteria and the core principles both initially and on an ongoing basis, and to conform its language to § 37.6(c)(1). As noted in the discussion of new § 37.6(c)(2) above, new § 38.5(c) is added, delegating to the Division of Market Oversight the authority under § 38.5(b) to request additional information in reviewing a DCM's continued compliance with designation criteria or core principles, or to enable the Commission to satisfy its obligations under the Act.

The title of Appendix A to Part 38 is revised to refer to ''Guidance on Compliance with Designation Criteria,'' and the introductory paragraph of the appendix is revised in conformity with the revisions to the introductory paragraph of Appendix A to Part 37, to make clear that the obligation to comply with the designation criteria applies not just to applicants, but is ongoing.

Designation Criterion 7 under Appendix A to Part 38 is updated to provide, consistent with the wording of other provisions regarding designation criteria and core principles, that a DCM ''should'' (rather than ''may'') provide information to the public by placing the information on its Web site.

In Appendix B to Part 38, language is added in subparagraph (1) to harmonize Part 38, Appendices A and B, with Part 37, Appendices A and B, consistent with the idea that the obligation to comply with the core principles applies both initially and on an ongoing basis. In subparagraph (2), a reference to ''selected'' requirements of the core principles is added to make clear that the enumerated acceptable practices under each core principle are neither the complete nor the exclusive requirements for meeting that core principle. With respect to the completeness issue, the selected requirements in the acceptable practices section of a particular core principle may not address all the requirements necessary for compliance with the core principle. With respect to the exclusivity issue, the acceptable practices that are listed for a particular core principle requirement are for illustrative purposes only and do not state the only means of satisfying the particular requirement they address. There may be other ways of complying with that requirement of the core principle that would also be acceptable.

Under Core Principle 2 of Appendix B to Part 38, a reference is added in subparagraph (a)(1) to clarify that a DCM may carry out trade practice surveillance programs through delegation or ''contracting out.'' A delegation confers upon the delegee/third party contractor the authority to act on behalf of the delegating authority. A third party contractor would not act in the DCM's name, but the DCM will be required to maintain sufficient control over the contractor because it remains the DCM's responsibility to assure that its obligations under the Act are met.[8]

Under Core Principle 6 of Appendix B, ''Emergency Authority,'' the language now appearing under subparagraph (b), ''Acceptable Practices,'' is moved to subparagraph (a), ''Application Guidance.'' This amendment reflects that the language moved to subparagraph (a) more accurately describes guidance on establishing rules to exercise emergency authority in the first instance, rather than acceptable practices in implementing such rules.

Under Core Principle 7 of Appendix B, guidance is added in subparagraph (b) as to what constitutes ''timely placement'' of information on a DCM's Web site. In noting that the DCM's rulebook should be ''available to the public,'' the intent of the subparagraph is that the rulebook should be freely accessible to anyone who visits the Web site without the need to register, log in, provide a user name or obtain a password.

Core Principle 8 of Appendix B requires that a DCM shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts. New language is added to subparagraph (b), Acceptable Practices, whereby compliance with § 16.01 of the Commission's regulations, which is mandatory since § 16.01 is one of the sections reserved under § 38.2, constitutes an acceptable practice under Core Principle 8. All currently designated DCMs are in compliance with § 16.01.

Under Core Principle 16 of Appendix B, paragraph (a) is revised to refer to a contract market's board (rather than the contract market as a whole) in conformity with the language of the core principle.

D. Part 39—Derivatives Clearing Organizations

The Commission adopted the application procedures specified in Commission Regulation 39.3 [9] for entities applying to be registered as DCOs in 2001 when it first implemented the CFMA.[10] The Commission is modifying the application procedures in a number of respects. Most of these

[8] See the discussion in 66 FR 42256, at 42266 (August 10, 2001).

[9] 17 CFR 39.3 (2001).

[10] See 66 FR 45604 (August 29, 2001). The CFMA, Appendix E of Pub. L. 106–554, 114 Stat. 2763, substantially revised the Commodity Exchange Act (Act or CEA), 7 U.S.C. 1 *et seq.*

modifications mirror changes recently made to Parts 37 and 38 regarding, among other things, the review and processing of applications for registration of DTEFs and DCMs.[11] With respect to the review period for applications generally, it is establishing, as it has under Parts 37 and 38, the presumption that all applications are submitted for review under the 180-day timeframe specified in Section 6(a) of the Act for DCMs and DTEFs.[12] An expedited 90-day review can be requested by the applicant, in which case the Commission will register the applicant as a DCO during or by the end of the 90-day period unless the Commission, or staff under delegated authority, terminates the expedited review for certain specifically identified reasons. In comparison to the former rules, the Commission is lengthening the expedited review period for DCO applications by 30 days. The Commission believes, based upon its experience in processing DCO applications and in light of certain administrative practices that have developed since these rules were first adopted, that this potentially longer review period is necessary to ensure a comprehensive review of applications and to meet other public policy objectives.

The Commission has reviewed nine DCO applications since passage of the CFMA. The applications were large and complex and contained technical documents describing operations and operational outsourcing agreements. The applications frequently generated a series of requests for information by Commission staff responsible for reviewing the applications. In addition, a new Commission policy to promote transparency in Commission operations, implemented in August of 2003, provides for the posting of all such applications on the Commission's Web site for a period of at least 15 days for public review and comment.[13] This lengthens the review process. The 90-day review period is intended to provide the Commission with sufficient time to review these substantial applications, to consider any public comments, and to take informed action. The Commission notes that the new 90-day ''fast-track'' review period, while longer than the former fast-track review period, would continue to be substantially shorter than the 180-day review period set forth in Section 6(a) for DCMs and DTEFs.

The Commission also is modifying its internal processing procedures under which an applicant would be registered as a DCO. An applicant shall no longer be deemed to be registered based upon the passage of time. If an applicant requests expedited review, the Commission will take affirmative action to register or designate the applicant as a DCO, subject to conditions if appropriate, not later than 90 days after receipt of the application, unless the Commission (or staff under delegated authority) terminates the expedited review. Thus, registration as a DCO will involve affirmative action by the Commission, which will normally be in the form of issuance of a Commission order. It should be noted that it remains possible, under the procedures, for applicants who submit applications that are complete and not amended or supplemented during the review period to be designated as a DCO in less than 90 days.

The expedited review period will be terminated if: (1) The application is materially incomplete; (ii) the application's form or substance fails to meet the requirements of Part 39; or (iii) the application undergoes major amendment or supplementation. The Commission also is providing for termination of expedited review if an application raises novel or complex issues that require additional time for review. This is responsive to the public interest that the Commission has witnessed to date with respect to the DCO applications and is substantially the same as it now is for DCMs and DTEFs. Fast-track review also may be terminated upon written instruction of the applicant during the review period.

With respect to the additional information that would be required to be submitted as part of the application, the rule requires that applicants demonstrate how they are able to satisfy each of the core principles specified in Section 5b of the Act. As amended, the rule eliminates the proviso, ''to the extent it is not self-evident from the applicant's rules.'' Based upon experience in reviewing DCO applications, the Commission recognizes that this additional information is necessary for Commission review of the application when determining whether the applicant satisfies the core principles. The amended rule eliminates the requirement that the applicant support requests for confidential treatment of information included in the application with reasonable justification. The Commission believes that the procedures provided in Commission Regulation 145.9, ''Petition for confidential treatment of information submitted to the Commission,'' should be followed by all applicants.

The Commission continues to encourage applicants to consult with Commission staff prior to formally submitting an application for DCO registration to help ensure that an application, once submitted, will be able to be reviewed in a timely manner.

E. Part 40—Provisions Common to Contract Markets, Derivatives Transaction Execution Facilities and Derivatives Clearing Organizations

In § 40.1, the definitions therein are redesignated as numbered subparagraphs, beginning with subparagraph (a). In redesignated subparagraphs 40.1(b)–(e), the definitions of dormant contract/product, dormant contract market, dormant derivatives clearing organization and dormant derivatives transaction execution facility, respectively, the length of time during which no trading (or clearing) has occurred before dormancy can be declared is extended from six to twelve calendar months. Also, in § 40.1(b), in the proviso granting a 36-month grace period after initial certification or Commission approval before a contract/product can be considered dormant, language is added to make clear that, if the DCM or DTEF itself becomes dormant prior to the running of the 36-month period, the contract/product will likewise be considered dormant. Finally, language is added to § 40.1(b) to allow a board of trade to self-declare a contract/product to be dormant at any time after initial certification or Commission approval.

Under new § 40.1(f), a definition of ''dormant rule'' is added whereby a new rule or rule amendment that is not made effective and implemented within twelve months of initial certification or Commission approval will be considered dormant and will have to be resubmitted, either by certification or for approval, before it may be implemented.

Sections 40.2, 40.3, 40.5 and 40.6 are revised for internal consistency between sections. In addition, in § 40.2, relating to listing new products for trading by certification, new subparagraph 40.2(b) makes clear that a registered entity shall provide, if requested by Commission staff, additional evidence, information

[11] 69 FR 67811 (November 22, 2004).

[12] Under the former rules, DCO applications were routinely reviewed under the fast-track procedures unless the applicant were to instruct the Commission in writing at the time of the submission of the application or during the review period to review the application pursuant to the time provisions of and procedures under Section 6 of the Act.

[13] The Commission has proposed revisions to Commission Regulation 40.8 to specify which portions of an application for registration as a DTEF or designation as a DCO will be made public. See 69 FR 44981 (July 28, 2004).

or data relating to whether the contract meets, initially or on a continuing basis, any of the requirements of the Act or Commission regulations or policies thereunder. Such evidence may be beneficial to the Commission in conducting a due diligence assessment of the product and the registered entity's compliance with these requirements, including the obligation that the registered entity must have reason to believe the certification is proper. This language is consistent with the Commission's obligation to assure that the Act and Commission regulations and policies thereunder are not being violated. Similar language is added in § 40.3(a)(9) with respect to voluntary submission of new products for approval, and in § 40.6(a)(4) with respect to self-certification of rules by DCMs and DTEFs. DCMs and DTEFs should be aware that, in conducting routine due diligence reviews of self-certified new product listings and new rules or rule amendments under § 40.2(b) and § 40.6(a)(4), respectively, the staff gives special consideration to particular requirements. For DTEFs, the key requirements are: § 5a(b)(2) of the Act (requirements for underlying commodities); Core Principle 3 (monitoring trading to assure an orderly market); and Core Principle 4 (disclosure of general information). For DCMs, the key requirements are: Core Principle 3 (listing contracts that are not readily susceptible to manipulation); Core Principle 4 (monitoring trading to prevent manipulation, price distortion or disruptions of the delivery or cash-settlement process); and Core Principle 5 (adopting position limits or position accountability rules to reduce the threat of market manipulation or distortion, especially in the delivery month). To the extent that a DCM or DTEF includes with its initial submission, data, research reports, trade interview reports, exchange or third party analyses, or other background information demonstrating compliance with these requirements, a DTEF or DCM can minimize the prospect of requests for additional information under § 40.2(b) or § 40.6(a)(4), respectively.

The revisions to § 40.3 set forth with greater particularity the information Commission staff needs to make a determination on whether to approve a new product voluntarily submitted for Commission review and approval.

Section 5c(c)(2)(B) of the Act and § 40.4 of the regulations require prior Commission approval of DCM rule amendments that, for a delivery month having open interest, would materially change a term or condition of a contract for future delivery of an enumerated agricultural commodity, or an option on such a contract or commodity.[14] These amendments add new subsection 40.4(b)(8) to include fees or fee changes that are $1.00 or more per contract and are established by an independent third party or are unrelated to delivery, trading, clearing or dispute resolution to the types of rule changes for which a materiality determination is not required. The amendments also make clear that the non-material changes described in § 40.4(b), subparagraphs (1)–(8), fall within the provisions of revised § 40.6(c) and will be subject to the weekly notification procedures set out therein. Also, in § 40.4(b)(9) under subparagraph (i), the deadline for Commission review of ''non-material agricultural rule changes'' is changed from 10 calendar days to 10 business days to provide for a consistent review period for all submissions and to allow for more time for review. Under subparagraph (ii), the DCM will be required to provide an explanation of why the DCM believes the proposed rule change is non-material. Similarly, in § 40.5(c)(1), the review period for rules that are voluntarily submitted by DCMs or DTEFs for approval is extended from 30 days to 45 days, to be consistent with § 40.3.

Under § 40.6, current § 40.6(a) sets out the conditions under which a DCM or DCO may implement new rules by certifying them to the Commission. Subparagraph 40.6(a)(1) provides that the certification procedure does not apply to rules of a DCM that materially change a term or condition of a futures or option contract on an enumerated agricultural commodity in a delivery month with open interest. Subparagraphs 40.6(a)(2) and (3) set out the filing requirements for rule certifications and the information to be provided in such certifications. Section 40.6(c) establishes an exception to the rule certification requirements of §§ 40.6 (a)(2) and (3) whereby DCMs and DCOs may place certain rules and rule amendments into effect without certification, provided that certain conditions are met. The conditions are that: (1) The DCM or DCO provide to the Commission a weekly summary of rule changes made effective pursuant to this paragraph; and (2) the rule change governs such routine matters as nonmaterial revisions, changes to delivery standards made by third parties that do not affect deliverable supplies or the pricing basis for the product, changes in the composition of an index (other than a stock index) that do not affect the pricing basis of the index, routine changes to option contract terms, and certain fee changes established by independent third parties. These amendments add a reference to § 40.6(a)(1) to the exception established in § 40.6(c). The effect is to make clear that, while material rule changes involving contract months with open interest in enumerated agricultural commodities may not be certified to the Commission, the type of routine changes described in § 40.6(c)(2), as well as the partially overlapping list of non-material changes in §§ 40.4(b)(1)–(8), do not constitute material changes within the meaning of the Act or Commission regulations. Therefore, DCMs may inform the Commission of such rule changes on a weekly basis under the provisions of § 40.6(c). Also, new § 40.6(c)(2)(vi) adds to the list of items that may be reported weekly under § 40.6(c)(1), changes in survey lists of banks, brokers or dealers that provide market information to an independent third party and that are incorporated by reference as product terms. Finally, new § 40.6(c)(3)(ii)(F) adds minor changes to security indexes to the list of information the Commission does not require to be certified or reported weekly by a DCM or DCO.

Under § 40.7, Delegations, new § 40.7(a)(3) delegates to the Division, with the concurrence of the Office of the General Counsel, the authority to determine whether a rule change submitted by a DCM for a materiality determination under § 40.4(b)(9) is not material (in which case it may be reported pursuant to the provisions of § 40.6(c)), or is material and, therefore, must be submitted for Commission prior approval. Finally, new § 40.7(b)(3) will increase the Division of Market Oversight's delegated authority to allow it, with the concurrence of the Office of the General Counsel, to approve rules regarding speculative limits or position accountability.

IV. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by Section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation or order under the Act. By its terms, § 15(a) does not require the Commission to quantify the costs and benefits of its action or to determine whether the benefits of the action outweigh its costs. Rather, § 15(a) simply requires the Commission to ''consider the costs and benefits'' of the subject rule or order.

Section 15(a) further specifies that the costs and benefits of the proposed rule

[14] The ''enumerated commodities'' are those agricultural commodities listed in § 1a(4) of the Act.

or order 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 futures markets; (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 rule or order 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.

These amendments are intended to clarify and codify acceptable practices under the rules for trading facilities, based on the Commission's experience over the past four years in applying those rules, including the adoption of several amendments to the original rules over the same period. The amendments also make various technical corrections and conforming amendments to the rules.

In addition, the amendments revise the application and review process for registration as a DCO by eliminating the presumption of automatic fast-track review of applications and replacing it with the presumption that all applications will be reviewed pursuant to the 180-day timeframe and procedures specified in Section 6(a) of the Act. In lieu of the current 60-day automatic fast-track review, the amendments permit applicants to request expedited review and to be registered as a DCO not later than 90 days after the Commission receives the application.

The Commission's proposal contained an analysis of its consideration of theses costs and benefits and solicited public comment thereon. 70 FR at 39678. The Commission specifically invited commenters to submit any data that they had quantifying the costs and benefits of the proposed amendments with their comment letters. *Id.* The Commission has considered all the comment letters received, some of which contained narrative discussion of the costs and benefits of specific provisions of the proposed amendments, but none of which set forth any data that quantified such costs and benefits.

The Commission has considered the costs and benefits of these amendments in light of the specific areas of concern identified in § 15. The Commission has endeavored in these amendments to impose the minimum requirements necessary to enable the Commission to perform its oversight functions, to carry out its mandate of assuring the continued existence of competitive and efficient markets and to protect the public interest in markets free of fraud and abuse. After considering their costs and benefits, the Commission has decided to adopt these amendments as discussed above.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The rule amendments adopted herein will affect exempt commercial markets, exempt boards of trade, derivatives transaction execution facilities, designated contract markets and designated clearing organizations. The Commission has previously determined that the foregoing entities are not small entities for purposes of the RFA.[15] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rule amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act of 1995

This rulemaking contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission submitted a copy of this section to the Office of Management and Budget (OMB) for its review. No comments were received in response to the Commission's invitation in the notice of proposed rulemaking to comment on any potential paperwork burden associated with these rules.

List of Subjects

17 CFR Part 36

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 37

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 38

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 39

Commodity futures, Consumer Protection.

17 CFR Part 40

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

■ In consideration of the foregoing, and pursuant to the authority in the Commodity Exchange Act and, in particular, Sections 1a, 2, 3, 4, 4c, 4i, 5, 5a, 5b, 5c, 5d, 6 and 8a of the Act, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 36—EXEMPT MARKETS

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c and 12a, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

■ 2. Section 36.2 is amended by revising paragraphs (b) and (c) to read as follows:

§ 36.2 Exempt boards of trade.

* * * * *

(b) *Notification.* Boards of trade operating under Section 5d of the Act as exempt boards of trade shall so notify the Commission. This notification shall be filed with the Secretary of the Commission at its Washington, DC headquarters, in electronic form, shall be labeled as ''Notification of Operation as an Exempt Board of Trade,'' and 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 notifying the Commission that it meets the criteria of Section 5d of the Act and elects to operate 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 operating a market in reliance on the exemption in Section 5d of the Act 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.

[15] 47 FR 18618, 18619 (April 30, 1982) discussing contract markets; 66 FR 42256, 42268 (August 10, 2001) discussing exempt boards of trade, exempt commercial markets and derivatives transaction execution facilities; 66 FR 45605, 45609 (August 29, 2001) discussing derivatives clearing organizations.

(ii) *Notification.* An exempt board of trade operating a market in reliance on the exemption in Section 5d of the Act 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 the market on a more than occasional basis;

(B) It has reason to believe that 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; or

(C) The exempt board of trade holds out the market to the public as performing a price discovery function for the cash market for the commodity.

(iii) *Price discovery determination.* Following receipt of a notice under paragraph (c)(2)(ii) of this section, or on its own initiative, the Commission may notify an exempt board of trade operating a market in reliance on the exemption in Section 5d of the Act that the facility appears to meet the criteria for performing a significant price discovery function under paragraph (c)(2)(i)(A) or (B) of this section. Before making a final price discovery determination under this paragraph, the Commission shall provide the exempt board of trade with an opportunity for a hearing through the submission of written data, views and arguments. Any such written data, views and arguments shall be filed with the Secretary of the Commission in the form and manner and within the time specified by the Commission. After consideration of all relevant matters, the Commission shall issue an order containing its determination whether the facility performs a significant price discovery function under the criteria of paragraph (c)(2)(i)(A) or (B) of this section.

(iv) *Price dissemination.* (A) An exempt board of trade that the Commission has determined performs a significant price discovery function under paragraph (c)(2)(iii) of this section shall disseminate publicly, and on a daily basis, all of the following information with respect to transactions executed in reliance on the exemption in Section 5d of the Act:

(*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 under Section 5d of the Act 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 Notification of Operation as an Exempt Board of Trade is still correct.

■ 3. Section 36.3 is amended by revising paragraph (a) revising paragraph (c)(2)(ii), and adding a new paragraph (c)(4) to read as follows:

§ 36.3 Exempt commercial markets.

(a) *Notification.* An electronic trading facility relying upon the exemption in Section 2(h)(3) of the Act shall notify the Commission of its intention to do so. This notification, and subsequent notification of any material changes in the information initially provided, shall be filed with the Secretary of the Commission at its Washington, DC headquarters, in electronic form, shall be labeled as ''Notification of Operation as an Exempt Commercial Market,'' and shall include the information and certifications specified in Section 2(h)(5)(A) of the Act.

* * * * *

(c) *Additional requirements.* * * *

(2) *Market data dissemination.* * * *

(ii) *Notification.* An electronic trading facility operating in reliance on Section 2(h)(3) of the Act 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 the market on a more than occasional basis;

(B) It has reason to believe that 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; or

(C) The market holds itself out to the public as performing a price discovery function for the cash market for the commodity.

* * * * *

(4) *Annual Certification.* An electronic trading facility operating in reliance upon the exemption in Section 2(h)(3) of the Act 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 Notification of Operation as an Exempt Commercial Market is still correct.

PART 37—DERIVATIVES TRANSACTION EXECUTION FACILITIES

■ 4. The authority citation for Part 37 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 6(c), 7a and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

■ 5. Section 37.1 is amended by revising paragraph (a) to read as follows:

§ 37.1 Scope and definition.

(a) *Scope.* The provisions of this part apply to any board of trade operating as or applying to become registered as a derivatives transaction execution facility under Sections 5a and 6 of the Act.

* * * * *

■ 6. Section 37.2 is revised to read as follows:

§ 37.2 Exemption.

Contracts, agreements or transactions traded on a derivatives transaction execution facility registered as such with the Commission under Section 5a of the Act, the facility and the facility's operator are exempt from all Commission regulations for such activity, except for the requirements of this Part 37 and:

(a) Section 15.05, Part 40 and Part 41 of this chapter, including any related definitions and cross-referenced sections; and

(b) Sections 1.3, 1.31, 1.59(d), 1.60, 1.63(c), 33.10, and Part 190 of this chapter and, as applicable to the market, §§ 15.00 to 15.04 and Parts 16 through 21 of this chapter, including any related definitions and cross-referenced

sections, which are applicable as though they were set forth in this Part 37 and included specific reference to derivatives transaction execution facilities.

§ 37.3 [Amended]

■ 7. Section 37.3 is amended as follows:
■ a. By redesignating paragraphs (b) and (c) as paragraphs (d) and (e);
■ b. By redesignating paragraph (a)(5) as paragraph (b);
■ c. By redesignating paragraph (a)(6) introductory text as paragraph (c);
■ d. By redesignating paragraphs (a)(6)(i) and (ii) as paragraphs (c)(1) and (2); and
■ e. By redesignating paragraphs (a)(6)(ii)(A) through (H) as paragraphs (c)(2)(i) through (viii).
■ 8. Section 37.6 is revised to read as follows:

§ 37.6 Compliance with core principles.

(a) *In general.* To maintain registration as a derivatives transaction execution facility upon commencing operations by listing products for trading or otherwise, or for a dormant derivatives transaction execution facility as defined in § 40.1 of this chapter that has been reinstated under § 37.5(d) upon recommencing operations by relisting products for trading or otherwise, and on a continuing basis thereafter, the derivatives transaction execution facility must have the capacity to be, and be, in compliance with the core principles of Section 5a(d) of the Act.

(b) *New and reinstated derivatives transaction execution facilities*—(1) *Certification of compliance.* Unless an applicant for registration or for reinstatement of registration has chosen to make a voluntary demonstration under paragraph (b)(2) of this section, a newly registered derivatives transaction execution facility at the time it commences operations, or a dormant derivatives transaction execution facility as defined in § 40.1 of this chapter at the time that it recommences operations, must certify to the Commission that it has the capacity to, and will, operate in compliance with the core principles under Section 5a(d) of the Act.

(2) *Voluntary demonstration of compliance.* An applicant for registration or for reinstatement of registration may choose to make a voluntary demonstration of its capacity to operate in compliance with the core principles. Such demonstration may be included in an application submitted pursuant to § 37.5 of this part.

(i) The demonstration would include the following:

(A) The label, ''Demonstration of Compliance with Core Principles for Operation'';

(B) A document that describes the manner in which the applicant will comply with each core principle (such as a regulatory chart), which could cite to documents previously submitted including documents submitted pursuant to § 37.5(b)(1)(ii)(A)–(E); and

(C) To the extent that any of the items in § 37.5(b)(1)(ii)(A)–(E) raise issues that are novel, or for which compliance with a core principle is not self-evident, an explanation as to how that item and the application satisfy the core principle.

(ii) If it appears that the applicant has failed to make the requisite showing, the Commission will so notify the applicant at the end of that period. Upon commencement or recommencement of operations by the derivatives transaction execution facility, such a notice may be considered by the Commission in a determination to issue a notice of violation of core principles under Section 5c(d) of the Act.

(c) *Existing derivatives transaction execution facilities*—(1) *In general.* Upon request by the Commission, a registered derivatives transaction execution facility shall file with the Commission such data, documents and other information as the Commission may specify in its request that demonstrates that the registered derivatives transaction execution facility is in compliance with one or more core principles as specified in the request or that is requested by the Commission to enable the Commission to satisfy its obligations under the Act.

(2) *Delegation of authority.* The Commission hereby delegates, until it orders otherwise, the authority set forth in paragraph (c)(1) of this section to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time. The Director may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

(3) *Change of owners.* Upon a change of ownership of an existing registered derivatives transaction execution facility, the new owner shall file electronically with the Secretary of the Commission at its Washington, DC, headquarters, a certification that the derivatives transaction execution facility meets the requirements for trading and the criteria for registration of Sections 5a(b) and 5a(c) of the Act, respectively.

(d) *Guidance regarding compliance with core principles.* Appendix B to this part provides guidance to registered derivatives transaction execution facilities on compliance with the core principles under Section 5a(d) of the Act.

■ 9. Section 37.7 is amended by revising paragraph (b) to read as follows:

§ 37.7 Additional requirements.

* * * * *

(b) *Material modifications.* Notwithstanding the provisions of Section 5c(c) of the Act, registered derivatives transaction execution facilities need not certify rules or rule amendments under § 40.6 of this chapter, and must only notify the Commission prior to placing into effect or amending such a rule, (as defined in § 40.1 of this chapter):

(1) By electronic notification to the Commission of the rule to be placed into effect or to be changed, in a format approved by the Secretary of the Commission, at the time traders or participants in the market are notified, but (unless taken as an emergency action) in no event later than the close of business on the business day preceding implementation. The submission notification shall be labeled ''DTEF Rule Notices'' and shall include the text of the rule or rule amendment (with deletions and additions indicated). *Provided, however*, the derivatives transaction execution facility need not notify the Commission of rules or rule amendments for which no certification is required under § 40.6(c) of this chapter.

(2) The derivatives transaction execution facility must maintain documentation regarding all changes to rules, terms and conditions or trading protocols.

* * * * *

■ 10. Section 37.8 is amended by revising paragraph (b) to read as follows:

§ 37.8 Information relating to transactions on derivatives transaction execution facilities.

* * * * *

(b) *Special calls for information from futures commission merchants or foreign brokers.* Upon special call by the Commission, each person registered as a futures commission merchant or a foreign broker (as defined in § 15.00 of this title) that carries or has carried an account for a customer on a derivatives transaction execution facility shall provide information to the Commission concerning such accounts or related positions carried for the customer on that or other facilities or markets, in the form and manner and within the time

specified by the Commission in the special call.

* * * * *

■ 11. Appendix A to Part 37 is amended by revising the heading of the appendix and the first paragraph of the appendix to read as follows:

Appendix A to Part 37—Guidance on Compliance With Registration Criteria

This appendix provides guidance on meeting the criteria for registration under Sections 5a(c) and 6 of the Act and this part, both initially and on an ongoing basis. The guidance following each registration criterion is illustrative only of the types of matters an applicant may address, as applicable, and is not intended to be used as a mandatory checklist. Addressing the issues and questions set forth in this appendix would help the Commission in its consideration of whether the application has met the criteria for registration. To the extent that compliance with, or satisfaction of, a criterion for registration is not self-explanatory from the face of the derivatives transaction execution facility's rules, (as defined in § 40.1 of this chapter), the application should include an explanation or other form of documentation demonstrating that the applicant meets the registration criteria of Section 5a(c) of the Act and § 37.5.

* * * * *

■ 12. Appendix B to Part 37 is amended by revising paragraphs 1. and 3. of the appendix to read as follows:

Appendix B to Part 37—Guidance on Compliance With Core Principles

1. This appendix provides guidance on complying with the core principles in order to maintain registration under Section 5a(d) of the Act and this part. This guidance is illustrative only and is not intended to be used as a mandatory checklist.

* * * * *

3. Alternatively, if an applicant for registration or for reinstatement of registration under § 37.6(b)(2) chooses to provide the Commission with a demonstration of its compliance with core principles, addressing the issues set forth in this appendix would help the Commission in its consideration of such compliance. To the extent that compliance with, or satisfaction of, the core principles is not self-explanatory from the face of the derivatives transaction execution facility's rules, (as defined in § 40.1 of this chapter) a submission under § 37.6(b)(2) should include an explanation or other form of documentation demonstrating that the derivatives transaction execution facility complies with the core principles.

* * * * *

■ 13. Appendix B to Part 37 is further amended by revising the second paragraph of Core Principle 5 to read as follows:

Appendix B to Part 37—Guidance on Compliance With Core Principles

* * * * *

Core Principle 5 of Section 5a(d)(5) of the Act: *DAILY PUBLICATION OF TRADING INFORMATION* * * *

* * * * *

A board of trade operating as a registered derivatives transaction execution facility should provide to the public information regarding settlement prices, price range, trading volume, open interest and other related market information for all applicable contracts, as determined by the Commission. In making such determination, the Commission will consider whether a contract performs a significant price discovery function for transactions in the cash market for the commodity underlying the contract. The Commission will apply the same standards applicable to exempt boards of trade and exempt commercial markets (see §§ 36.2(b)(2) and 36.3(c)(2), respectively) whereby a market performs a significant price discovery function for transactions in the cash market for an underlying commodity if: (1) 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 (2) 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. In the event the Commission has reason to believe that a derivatives transaction execution facility may meet either of the foregoing standards, or if the facility holds itself out to the public as performing a price discovery function for the cash market for the underlying commodity, the Commission shall notify the facility that it appears to meet the criteria for performing a significant price discovery function under Core Principle 5. Before making a final price discovery determination under this core principle, the Commission shall provide the facility with an opportunity for a hearing through the submission of written data, views and arguments. After consideration of all relevant matters, the Commission shall issue an order containing its determination whether the requirement of the core principle on publication of trading information under Section 5a(d)(5) of the Act applies to a particular contract traded on a facility. Provision of information for any applicable contract could be through such means as providing the information to a financial information service or by placing the information on a facility's Web site. Such information shall be made available to the public without charge no later than the business day following the day to which the information pertains.

* * * * *

PART 38—DESIGNATED CONTRACT MARKETS

■ 14. The authority citation for Part 38 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 7 and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

■ 15. Section 38.1 is revised to read as follows:

§ 38.1 Scope.

The provisions of this Part 38 shall apply to every board of trade that has been designated or is applying to become designated as a contract market under Sections 5 and 6 of the Act. *Provided, however,* nothing in this provision affects the eligibility of designated contract markets to operate under the provisions of Parts 36 or 37 of this chapter.

■ 16. Section 38.2 is revised to read as follows:

§ 38.2 Exemption.

Agreements, contracts, or transactions traded on a designated contract market under Section 5 of the Act, the contract market and the contract market's operator are exempt from all Commission regulations for such activity, except for the requirements of this Part 38 and §§ 1.3, 1.12(e), 1.31, 1.37(c)–(d), 1.38, 1.52, 1.59(d), 1.60, 1.63(c), 1.67, 33.10, Part 9, Parts 15 through 21, Part 40, Part 41 and Part 190 of this chapter, including any related definitions and cross-referenced sections.

■ 17. Section 38.5 is amended by revising paragraph (b), redesignating paragraph (c) as paragraph (d), and adding new paragraph (c) as follows:

§ 38.5 Information relating to contract market compliance.

* * * * *

(b) Upon request by the Commission, a designated contract market shall file with the Commission a written demonstration, containing such supporting data, information and

documents, in the form and manner and within such time as the Commission may specify, that the designated contract market is in compliance with one or more designation criteria or core principles as specified in the request, or that is requested by the Commission to enable the Commission to satisfy its obligations under the Act.

(c) *Delegation of authority.* The Commission hereby delegates, until it orders otherwise, the authority set forth in paragraph (b) to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time. The Director may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

* * * * *

■ 18. Appendix A to Part 38 is amended by revising the heading of the appendix and the first paragraph of the appendix to read as follows:

Appendix A to Part 38—Guidance on Compliance With Designation Criteria

This appendix provides guidance on meeting the criteria for designation under Sections 5(b) and 6 of the Act and this part, both initially and on an ongoing basis. The guidance following each designation criterion is illustrative only of the types of matters an applicant may address, as applicable, and is not intended to be used as a mandatory checklist. Addressing the issues and questions set forth in this appendix would help the Commission in its consideration of whether the application has met the criteria for designation. To the extent that compliance with, or satisfaction of, a criterion for designation is not self-explanatory from the face of the contract market's rules (as defined in § 40.1 of this chapter), the application should include an explanation or other form of documentation demonstrating that the applicant meets the designation criteria of Section 5(b) of the Act.

* * * * *

■ 19. Appendix A to Part 38 is further amended by revising the second paragraph of Designation Criterion 7 to read as follows:

Appendix A to Part 38—Guidance on Compliance with Designation Criteria

* * * * *

Designation Criterion 7 of Section 5(b) of the Act: *PUBLIC ACCESS* * * *

* * * * *

A designated contract market should provide information to the public by placing the information on its Web site.

* * * * *

■ 20. Appendix B to Part 38 is amended by revising paragraphs 1. and 2. to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

1. This appendix provides guidance on complying with the core principles, both initially and on an ongoing basis, to maintain designation under Section 5(d) of the Act and this part. The guidance is provided in paragraph (a) following each core principle and it can be used to demonstrate to the Commission core principle compliance, under §§ 38.3(a) and 38.5. The guidance for each core principle is illustrative only of the types of matters a board of trade may address, as applicable, and is not intended to be used as a mandatory checklist. Addressing the issues and questions set forth in this appendix would help the Commission in its consideration of whether the board of trade is in compliance with the core principles. To the extent that compliance with, or satisfaction of, a core principle is not self-explanatory from the face of the board of trade's rules (as defined in § 40.1 of this chapter), an application pursuant to § 38.3, or a submission pursuant to § 38.5 should include an explanation or other form of documentation demonstrating that the board of trade complies with the core principles.

2. Acceptable practices meeting selected requirements of the core principles are set forth in paragraph (b) following each core principle. Boards of trade that follow the specific practices outlined under paragraph (b) for any core principle in this appendix will meet the selected requirements of the applicable core principle. Paragraph (b) is for illustrative purposes only, and does not state the exclusive means for satisfying a core principle.

* * * * *

■ 21. Appendix B to Part 38 is further amended by revising paragraph (a)(1) of Core Principle 2 to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 2 of Section 5(d) of the Act: *COMPLIANCE WITH RULES* * * *

(a) *Application guidance.* (1) A designated contract market should have arrangements and resources for effective trade practice surveillance programs, with the authority to collect information and documents on both a routine and non-routine basis, including the examination of books and records kept by the contract market's members and by non-intermediated market participants. The arrangements and resources should facilitate the direct supervision of the market and the analysis of data collected. Trade practice surveillance programs may be carried out by the contract market itself or through delegation or contracting-out to a third party. If the contract market delegates or contracts-out the trade practice surveillance responsibility to a third party, such third party should have the capacity and authority to carry out such program, and the contract market should retain appropriate supervisory authority over the third party.

* * * * *

■ 22. Appendix B to Part 38 is further amended by revising paragraphs (a) and (b) of Core Principle 6 to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 6 of Section 5(d) of the Act: *EMERGENCY AUTHORITY* * * *

(a) *Application guidance.* A designated contract market should have clear procedures and guidelines for contract market decision-making regarding emergency intervention in the market, including procedures and guidelines to avoid conflicts of interest while carrying out such decision-making. A contract market should also have the authority to intervene as necessary to maintain markets with fair and orderly trading as well as procedures for carrying out the intervention. Procedures and guidelines should include notifying the Commission of the exercise of a contract market's regulatory emergency authority, explaining how conflicts of interest are minimized, and documenting the contract market's decision-making process and the reasons for using its emergency action authority. Information on steps taken under such procedures should be included in a submission of a certified rule and any related submissions for rule approval pursuant to Part 40, when carried out pursuant to a contract market's emergency authority. To address perceived market threats, the contract market, among other things, should be able to impose position limits in the delivery month, impose or modify price limits, modify circuit breakers,

call for additional margin either from customers or clearing members, order the liquidation or transfer of open positions, order the fixing of a settlement price, order a reduction in positions, extend or shorten the expiration date or the trading hours, suspend or curtail trading on the market, order the transfer of customer contracts and the margin for such contracts from one member including non-intermediated market participants of the contract market to another, or alter the delivery terms or conditions, or, if applicable, should provide for such actions through its agreements with its third-party provider of clearing services.

(b) *Acceptable practices.* [Reserved]

* * * * *

■ 23. Appendix B to Part 38 is further amended by adding paragraph (b) of Core Principle 7 to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 7 of Section 5(d) of the Act: *AVAILABILITY OF GENERAL INFORMATION* * * *

* * * * *

(b) *Acceptable practices.* In making information available to market participants and the public, on its Web site, a designated contract market should place information on the Web site no later than the day a new product is listed, the day a new or amended rule is implemented or the day previously disclosed information is changed. For example, the timely provision of this information on a contract market's Web site could be done through press releases, newsletters or notices to members. Additionally, a contract market should ensure that the rulebook posted on its Web site is available to the public (*i.e.*, can be accessed by visitors to the Web site without the need to register, log in, provide a user name or obtain a password) and is kept current. A rulebook will be considered current if: (1) Notice of any substantive new or amended rule is provided within one day of implementation, either by press release, newsletter, notice to members or actual posting of the change in the rulebook; and (2) all new rules, both substantive and non-substantive, are posted in the rulebook within five days of implementation.

* * * * *

■ 24. Appendix B to Part 38 is further amended by adding paragraph (b) of Core Principle 8 to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 8 of Section 5(d) of the Act: *DAILY PUBLICATION OF TRADING INFORMATION* * * *

* * * * *

(b) *Acceptable Practices.* The mandatory compliance with Section 16.01, ''Trading volume, open contracts, prices and critical dates,'' required under the regulations, would constitute an acceptable practice under Core Principle 8.

* * * * *

■ 25. Appendix B to Part 38 is further amended by revising paragraph (a) of Core Principle 16 to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 16 of Section 5(d) of the Act: *COMPOSITION OF BOARDS OF MUTUALLY OWNED CONTRACT MARKETS* * * *

(a) *Application guidance.* The composition of a mutually-owned contract market's governing board should fairly represent the diversity of interests of the contract market's market participants.

* * * * *

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

■ 26. The authority citation for Part 39 continues to read as follows:

Authority: 7 U.S.C. 7b, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

■ 27. Section 39.3 is revised to read as follows:

§ 39.3 Procedures for registration.

(a) *Application Procedures. (1) 180-day review procedures.* An organization desiring to be registered as a derivatives clearing organization shall file electronically an application for registration with the Secretary of the Commission at its Washington, DC, headquarters. Except as provided under the 90-day review procedures described in paragraph (a)(3) of this section, the Commission will review the application for registration as a derivatives clearing organization pursuant to the 180-day timeframe and procedures specified in section 6(a) of the Act. The Commission may approve or deny the application or, if deemed appropriate, register the applicant as a derivatives clearing organization subject to conditions.

(2) The following must be included:

(i) The application is labeled as being submitted pursuant to this Part 39;

(ii) The applicant represents that it will operate in accordance with the definition of derivatives clearing organization contained in section 1a(9) of the Act;

(iii) The application includes a copy of the applicant's rules;

(iv) The application demonstrates how the applicant is able to satisfy each of the core principles specified in section 5b(c)(2) of the Act;

(v) The applicant submits agreements entered into or to be entered into between or among the applicant, its operator/service provider or its participants, that will enable the applicant to comply, or demonstrate the applicant's ability to comply, with the core principles specified in section 5b(c)(2) of the Act. The agreements must identify the services that will be provided. If a submitted agreement is not final and executed, the application must include evidence which constitutes reasonable assurances that such services will be provided as soon as operations require;

(vi) The applicant submits descriptions of system test procedures, tests conducted or test results, that will enable the applicant to comply, or demonstrate the applicant's ability to comply, with the core principles specified in section 5b(c)(2) of the Act; and

(vii) The applicant identifies with particularity information in the application that will be subject to a request for confidential treatment and supports that request for confidential treatment.

(3) *Ninety-day review procedures.* An organization desiring to be registered as a derivatives clearing organization may request that its application be reviewed on a 90-day basis and that the applicant be registered as a derivatives clearing organization 90 days after the date of receipt of the application for registration by the Secretary of the Commission. The 90-day period shall begin on the first business day (during the business hours defined in § 40.1 of this chapter) that the Commission is in receipt of the application. Unless the Commission notifies the applicant during the 90-day period that the expedited review has been terminated pursuant to § 39.3(b), the Commission will register the applicant as a derivatives clearing organization during the 90-day period. If deemed appropriate by the Commission, the registration may be subject to such conditions as the Commission may stipulate.

(i) The application must include the items described in §§ 39.3(a)(2)(i) through (vi); and

(ii) The applicant must not amend or supplement the application except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period.

(b) *Termination of 90-day review.* (1) During the 90-day period for review pursuant to paragraph (a)(3) of this section, the Commission shall notify the applicant seeking registration that the Commission is terminating review under this section and will review the proposal under the 180-day time period and procedures of Section 6(a) of the Act, if it appears to the Commission that the application:

(i) Is materially incomplete;

(ii) Fails in form or substance to meet the requirements of this part;

(iii) Raises novel or complex issues that require additional time for review; or

(iv) Is amended or supplemented in a manner that is inconsistent with § 39.3(a)(3)(ii).

(2) This termination notification shall identify the deficiencies in the application that render it incomplete, the manner in which the application fails to meet the requirements of this part, or the novel or complex issues that require additional time for review. The Commission shall also terminate review under this section if requested in writing to do so by the applicant.

(c) *Withdrawal of application for registration.* An applicant for registration may withdraw its application submitted pursuant to paragraphs (a)(1) through (2) or (a)(3) of this section by filing with the Commission such a request. Withdrawal of an application for registration shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that the application for registration was pending with the Commission.

(d) *Guidance for applicants and registrants.* Appendix A to this part provides guidance to applicants and registrants on how the core principles specified in Section 5b(c)(2) of the Act may be satisfied.

(e) *Reinstatement of dormant registration.* Before listing or relisting contracts for clearing, a dormant registered derivatives clearing organization as defined in § 40.1 of this chapter must reinstate its registration under the procedures of paragraph (a)(1) through (2) or (a)(3) of this section; *provided, however,* that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

(f) *Request for vacation of registration.* A registered derivatives clearing organization may vacate its registration under Section 7 of the Act by filing electronically such a request with the Commission at its Washington, DC headquarters. Vacation of registration shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the facility was designated by the Commission.

(g) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Clearing and Intermediary Oversight or the Director's delegates, with the concurrence of the General Counsel or the General Counsel's delegates, the authority to notify an applicant seeking designation under Section 6(a) of the Act that the application is materially incomplete and the running of the 180-day period is stayed or that the 90-day review under paragraph (a)(3) of this section is terminated.

(2) The Director of the Division of Clearing and Intermediary Oversight may submit to the Commission for its consideration any matter which has been delegated in this paragraph.

(3) Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (g)(1) of this section.

PART 40—PROVISIONS COMMON TO CONTRACT MARKETS, DERIVATIVES TRANSACTION EXECUTION FACILITIES AND DERIVATIVES CLEARING ORGANIZATIONS

■ 28. The authority citation for Part 40 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a, 8 and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

■ 29. Section 40.1 is revised to read as follows:

§ 40.1 Definitions.

As used in this part:

(a) *Business hours* means the hours between 8:15 a.m. and 4:45 p.m., eastern standard time or eastern daylight savings time, whichever is currently in effect in Washington, DC, all days except Saturdays, Sundays and legal public holidays.

(b) *Dormant contract or dormant product* means any commodity futures or option contract or other agreement, contract, transaction or instrument in which no trading has occurred in any future or option expiration for a period of twelve complete calendar months and in which there is no open interest; *provided, however,* no contract or instrument shall be considered to be dormant until the end of 36 complete calendar months following initial exchange certification or Commission approval, or until the designated contract market or derivatives transaction execution facility on which it is traded becomes dormant. Notwithstanding the above, a board of trade may, by certifying to the Commission, self-declare a contract to be dormant at any time following initial exchange certification or Commission approval.

(c) *Dormant contract market* means any designated contract market on which no trading has occurred for a period of twelve complete calendar months; *provided, however,* no contract market shall be considered to be dormant until the end of 36 complete calendar months following the day that the initial order of designation was issued.

(d) *Dormant derivatives clearing organization* means any derivatives clearing organization that has not accepted for clearing any agreement, contract or transaction that is required or permitted to be cleared by a derivatives clearing organization under Sections 5b(a) and 5b(b) of the Act, respectively, for a period of twelve complete calendar months; *provided, however,* no derivatives clearing organization shall be considered to be dormant until the end of 36 complete calendar months following the day that the initial order of registration was issued.

(e) *Dormant derivatives transaction execution facility* means any derivatives transaction execution facility on which no trading has occurred for a period of twelve complete calendar months; *provided, however,* no derivatives transaction execution facility shall be considered to be dormant until the end of 36 complete calendar months following the day that the initial order of registration was issued.

(f) *Dormant rule* means any new rule or rule amendment which the designated contract market, derivatives transaction execution facility or derivatives clearing organization has not made effective and implemented; *provided, however,* no new rule or rule amendment shall be considered to be dormant until the end of twelve complete calendar months following initial certification or Commission approval. Prior to implementing a dormant rule, it should be resubmitted to the Commission, either by certification or for approval.

(g) *Emergency* means any occurrence or circumstance which, in the opinion of the governing board of the contract market, derivatives transaction execution facility or derivatives clearing organization, requires immediate action and threatens or may threaten such things as the fair and orderly trading in, or the liquidation of or delivery pursuant to, any agreements, contracts or transactions on such a trading facility, including: Any manipulative or attempted manipulative activity; any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions; any circumstances which may materially affect the performance of agreements, contracts or transactions traded on the trading facility, including failure of the payment system or the bankruptcy or insolvency of any participant; any action taken by any governmental body, or any other board of trade, market or facility which may have a direct impact on trading on the trading facility; and any other circumstance which may have a severe, adverse effect upon the functioning of a designated contract market or derivatives transaction execution facility.

(h) *Rule* means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, term and condition, trading protocol, agreement or instrument corresponding thereto, in whatever form adopted, and any amendment or addition thereto or repeal thereof, made or issued by a contract market, derivatives transaction execution facility or derivatives clearing organization or by the governing board thereof or any committee thereof, except those provisions relating to the setting of levels of margin for commodities other than those subject to the provisions of Section 2(a)(1)(C)(v) of the Act and security futures as defined in Section 1a(31) of the Act.

(i) *Terms and conditions* mean any definition of the trading unit or the specific commodity underlying a contract for the future delivery of a commodity or commodity option contract, specification of cash settlement or delivery standards and procedures, and establishment of buyers' and sellers' rights and obligations under the contract. Terms and conditions include provisions relating to the following:

(1) Quality and other standards that define the commodity or instrument underlying the contract;

(2) Quantity standards or other provisions related to contract size;

(3) Any applicable premiums or discounts for delivery of nonpar products;

(4) Trading hours, trading months and the listing of contracts;

(5) The pricing basis and minimum price fluctuations;

(6) Any price limits, trading halts, or circuit breaker provisions, and procedures for the establishment of daily settlement prices;

(7) Position limits, position accountability standards, and position reporting requirements;

(8) Delivery points and locational price differentials;

(9) Delivery standards and procedures, including fees related to delivery or the delivery process, alternatives to delivery and applicable penalties or sanctions for failure to perform;

(10) If cash settled; all provisions related to the definition, composition, calculation and revision of the cash settlement price or index; and

(11) Payment or collection of commodity option premiums or margins.

■ 30. Section 40.2 is revised to read as follows:

§ 40.2 Listing products for trading by certification.

(a) A registered entity may list a new product for trading, list a product for trading that has become dormant, or accept for clearing a product that is not traded on a designated contract market or a registered derivatives transaction execution facility, if the following conditions have been met:

(1) The registered entity has filed its submission electronically with the Secretary of the Commission and at the regional office having local jurisdiction over the registered entity, in a format specified by the Secretary of the Commission;

(2) The Commission has received the submission at its headquarters by close of business on the business day preceding the product's listing or acceptance for clearing, and:

(3) The submission includes:

(i) A copy of the submission cover sheet in accordance with the instructions in Appendix D to this part;

(ii) A copy of the product's rules, including all rules related to its terms and conditions, or the rules establishing the terms and conditions of the listed product that make it acceptable for clearing;

(iii) The intended listing date; and

(iv) A certification by the registered entity that the product to be listed complies with the Act and regulations thereunder.

(b) A registered entity shall provide, if requested by Commission staff, additional evidence, information or data relating to whether the contract meets, initially or on a continuing basis, any of the requirements of the Act or Commission regulations or policies thereunder which may be beneficial to the Commission in conducting a due diligence assessment of the product and the entity's compliance with these requirements.

(c) *Stay.* The Commission may stay the listing of a contract pursuant to paragraph (a) of this section during the pendency of Commission proceedings for filing a false certification or to alter or amend the contract terms and conditions pursuant to Section 8a(7) of the Act. The decision to stay the listing of a contract in such circumstances shall not be delegable to any employee of the Commission.

■ 31. Section 40.3 is amended by revising paragraphs (a), (c), and (e)(2) to read as follows:

§ 40.3 Voluntary submission of new products for Commission review and approval.

(a) *Request for approval.* A designated contract market or registered derivatives transaction execution facility may request under Section 5c(c)(2) of the Act that the Commission approve new products. A submission requesting approval shall:

(1) Be filed electronically with the Secretary of the Commission and at the regional office of the Commission having local jurisdiction over the submitting registered entity in a format specified by the Secretary of the Commission;

(2) Include a copy of the submission cover sheet in accordance with the instructions in Appendix D to this part;

(3) Include a copy of the rules that set forth the contract's terms and conditions;

(4) Comply with the requirements of Appendix A to this part—Guideline No. 1. To demonstrate compliance, the submission shall include:

(i) An explanation, if not self-evident from the rules, as to how the specific terms and conditions satisfy the acceptable practices set forth in Guideline No. 1, Appendix A to Part 40. This information may be provided in narrative form or by completion of the applicable chart.

(ii) For physical delivery contracts, an explanation as to how 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.

(iii) For cash settled contracts, an explanation as to how the cash settlement of the contract is at a price reflecting the underlying cash market, will not be subject to manipulation or distortion, and is based on a cash price series that is reliable, acceptable, publicly available and timely.

(iv)(A) A brief description of the cash market for the commodity, instrument, index or interest that underlies the contract. The description may include materials prepared by the designated contract market or registered derivatives transaction execution facility, 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.

(B) The cash market description may, however, be confined only to those aspects relevant to particular term(s) or condition(s) that differ from an existing contract, where a contract based on the same, or a closely related, commodity is already listed for trading and is not dormant.

(5) Describe any agreements or contracts entered into with other parties that enable the designated contract market or derivatives transaction execution facility to carry out its responsibilities.

(6) Include the certifications required in § 41.22 for product approval of a commodity that is a security future or a security futures product as defined in Sections 1a(31) or 1a(32) of the Act, respectively;

(7) Identify with particularity information in the submission (except for the product's terms and conditions which are made publicly available at the time of submission) that will be subject to a request for confidential treatment and support that request for confidential treatment with reasonable justification;

(8) Include the filing fee required under Appendix B to this part; and

(9) Include, if requested by Commission staff, 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, or any other requirement for designation under the Act or Commission regulations or policies thereunder.

* * * * *

(c) *Extension of time.* The Commission may extend the forty-five day review period in paragraph (b) of this section for:

(1) An additional forty-five days, if the product raises novel or complex issues that require additional time for review or is of major economic significance, in which case, the Commission would notify the submitting registered entity within the initial forty-five day review period and would briefly describe the nature of the specific issues for which additional time for review would be required; or

(2) Such extended period as the submitting registered entity so instructs the Commission in writing.

* * * * *

(e) *Effect of non-approval.*

(1) * * *

(2) Notification to a submitting registered entity under paragraph (d) of this section of the Commission's refusal to approve a product shall be presumptive evidence that the entity may not truthfully certify under § 40.2 that the same, or substantially the same, product does not violate the Act or regulations thereunder.

■ 32. Section 40.4 is revised to read as follows:

§ 40.4 Amendments to terms or conditions of enumerated agricultural contracts.

(a) Designated contract markets must submit for Commission approval under the procedures of § 40.5, prior to its implementation, any rule or rule amendment that, for a delivery month having open interest, would materially change a term or condition as defined in § 40.1(i), of a contract for future delivery in an agricultural commodity enumerated in Section 1a(4) of the Act, or of an option on such a contract or commodity.

(b) The following rules or rule amendments are not material changes and, except as provided in paragraph (b)(9) of this section, may be reported to the Commission pursuant to the provisions of § 40.6(c):

(1) Changes in trading hours;

(2) Changes in lists of approved delivery facilities pursuant to previously set standards or criteria;

(3) Changes to terms and conditions of options on futures other than those relating to last trading day, expiration date, option strike price delistings, and speculative position limits;

(4) Reductions in the minimum price fluctuation (or ''tick'');

(5) Changes required to comply with a binding order of a court of competent jurisdiction, or of a rule, regulation or order of the Commission or of another federal regulatory authority;

(6) Corrections of typographical errors, renumbering, periodic routine updates to identifying information about approved entities and other such nonsubstantive revisions of a product's terms and conditions that have no effect on the economic characteristics of the product;

(7) Fees or fee changes of less than $1.00 per contract;

(8) Fees or fee changes that are $1.00 or more per contract and are established by an independent third party or are unrelated to delivery, trading, clearing or dispute resolution; and

(9) Any other rule:

(i) The text of which has been submitted for review to the Secretary of the Commission electronically in a format specified by the Secretary of the Commission, at least ten business days prior to its implementation and that has been labeled ''Non-Material Agricultural Rule Change;''

(ii) For which the registered entity has provided an explanation as to why it considers the rule ''non-material,'' and any other information that may be beneficial to the Commission in analyzing the merits of the entity's claim of non-materiality; and

(iii) With respect to which the Commission has not notified the contract market during the review period that the rule appears to require or does require prior approval under this section.

■ 33. Section 40.5 is amended by revising paragraph (a), revising paragraph (c)(1) and revising paragraph (e)(2) to read as follows:

§ 40.5 Voluntary submission of rules for Commission review and approval.

(a) *Request for approval of rules.* A registered entity may request pursuant to Section 5c(c) of the Act that the Commission approve any proposed rule or rule amendment. A submission requesting approval shall:

(1) Be filed electronically with the Secretary of the Commission and at the regional office of the Commission having local jurisdiction over the registered entity in a format specified by the Secretary of the Commission.

(2) Include a copy of the submission cover sheet in accordance with the instructions in Appendix D to this part;

(3) Set forth the text of the proposed rule or rule amendment (in the case of a rule amendment, deletions and additions must be indicated);

(4) Describe the proposed effective date of a proposed rule and any action taken or anticipated to be taken to adopt the proposed rule by the registered entity or by its governing board or by any committee thereof, and cite the rules of the entity that authorize the adoption of the proposed rule;

(5) Explain the operation, purpose, and effect of the proposed rule,

including, as applicable, a description of the anticipated benefits to market participants or others, any potential anticompetitive effects on market participants or others, how the rule fits into the registered entity's framework of self-regulation, a demonstration that the submission complies with the requirements of Appendix A to this part—Guideline No. 1, and any other information which may be beneficial to the Commission in analyzing the proposed rule. If a proposed rule affects, directly or indirectly, the application of any other rule of the submitting registered entity, set forth the pertinent text of any such rule and describe the anticipated effect;

(6) Briefly describe any substantive opposing views expressed to the registered entity by governing board or committee members, members of the entity or market participants with respect to the proposed rule that were not incorporated into the proposed rule;

(7) Identify any Commission regulation that the Commission may need to amend, or sections of the Act or Commission regulations that the Commission may need to interpret, in order to approve the proposed rule. To the extent that such an amendment or interpretation is necessary to accommodate a proposed rule, the submission should include a reasoned analysis supporting the amendment to the Commission regulation or the interpretation;

(8) Identify with particularity information in the submission (except for a product's terms and conditions, which are made publicly available at the time of submission) that will be subject to a request for confidential treatment and support that request for confidential treatment with reasonable justification; and

(9) Include a copy of the submission cover sheet in accordance with the instructions in Appendix D to this part.

* * * * *

(c) *Extensions of time.* * * *

(1) An additional forty-five days, if the proposed rule raises novel or complex issues that require additional time for review or is of major economic significance, in which case, the Commission would notify the submitting registered entity within the initial forty-five day review period and would briefly describe the nature of the specific issues for which additional time for review would be required; or

* * * * *

(e) *Effect of non-approval.* * * *

(2) Notification to a registered entity under paragraph (d) of this section of the Commission's refusal to approve a proposed rule or rule amendment of a registered entity shall be presumptive evidence that the entity may not truthfully certify that the same, or substantially the same, proposed rule or rule amendment does not violate the Act or regulations thereunder.

* * * * *

■ 34. Section 40.6 is amended by revising paragraph (a) introductory text, paragraphs (a)(2) and (3), paragraph (c) introductory text, and paragraphs (c)(1), (c)(2)(iii) and (c)(2)(v), and by adding new paragraphs (a)(4), (c)(2)(vi) and (c)(3)(ii)(F) to read as follows:

§ 40.6 Self-certification of rules by designated contract markets and registered derivatives clearing organizations.

(a) *Required certification.* A designated contract market or a registered derivatives clearing organization may implement any new rule or rule amendment (other than a rule or rule amendment approved or deemed approved by the Commission under § 40.5) if the following conditions have been met:

* * * * *

(2) The designated contract market or registered derivatives clearing organization has filed a submission electronically for the rule or rule amendment with the Secretary of the Commission and at the regional office having local jurisdiction over the submitting registered entity in a format specified by the Secretary of the Commission, and the Commission has received the submission at its headquarters by close of business on the business day preceding implementation of the rule; *provided, however,* rules or rule amendments implemented under procedures of the governing board to respond to an emergency as defined in § 40.1, shall, if practicable, be filed with the Commission prior to the implementation or, if not practicable, be filed with the Commission at the earliest possible time after implementation, but in no event more than 24 hours after implementation; and

(3) The rule submission includes:

(i) A copy of the submission cover sheet in accordance with the instructions in Appendix D to this part (in the case of a rule or rule amendment that responds to an emergency, ''Emergency Rule Certification'' should be noted in the Description section of the submission coversheet);

(ii) The text of the rule (in the case of a rule amendment, deletions and additions must be indicated);

(iii) The date of implementation;

(iv) A brief explanation of any substantive opposing views expressed to the registered entity by governing board or committee members, members of the entity or market participants, that were not incorporated into the rule; and

(v) A certification by the registered entity that the rule complies with the Act and regulations thereunder.

(4) The registered entity shall provide, if requested by Commission staff, additional evidence, information or data that may be beneficial to the Commission in conducting a due diligence assessment of the certification filing and the entity's compliance with any of the requirements of the Act or Commission regulations or policies thereunder.

* * * * *

(c) *Notification of rule amendments.* Notwithstanding the rule certification requirement of Section 5c(c)(1) of the Act, and paragraphs (a)(1), (a)(2) and (a)(3) of this section, a designated contract market or a registered derivatives clearing organization may place the following rules or rule amendments into effect without certification to the Commission if the following conditions are met:

(1) The designated contract market or registered derivatives clearing organization provides to the Commission at least weekly a summary notice of all rule changes made effective pursuant to this paragraph during the preceding week. Such notice must be labeled ''Weekly Notification of Rule Changes'' and need not be filed for weeks during which no such actions have been taken. One copy of each such submission shall be furnished electronically in a format specified by the Secretary of the Commission; and

(2) * * *

(iii) *Index products.* Routine changes in the composition, computation, or method of selection of component entities of an index (other than a stock index) referenced and defined in the product's terms, 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 information and which was not formed solely for the purpose of compiling an index for use in connection with a futures or option product;

* * * * *

(v) *Fees.* Fees or fee changes that are $1.00 or more per contract and are established by an independent third party or are unrelated to delivery, trading, clearing or dispute resolution.

(vi) *Survey lists.* Changes to lists of banks, brokers, dealers, or other entities that provide price or cash market information to an independent third

party and that are incorporated by reference as product terms.

(3) * * *

(ii) * * *

(F) *Securities Indexes.* Routine changes to the composition, computation or method of security selection of an index that is referenced and defined in the product's rules, and which are made by an independent third party.

■ 35. Section 40.7 is amended by adding paragraphs (a)(3) and (b)(3) to read as follows:

§ 40.7 Delegations.

(a) *Procedural matters* * * *

(3) The Commission hereby delegates to the Director of the Division of Market Oversight or to the Director's delegate, with the concurrence of the General Counsel or the General Counsel's delegate, the authority to determine whether a rule change submitted by a DCM for a materiality determination under § 40.4(b)(9) is not material (in which case it may be reported pursuant to the provisions of § 40.6(c)), or is material, in which case he or she shall notify the DCM that the rule change must be submitted for the Commission's prior approval.

(b) *Approval authority.* * * *

(3) Establish or amend speculative limits or position accountability provisions that are in compliance with the requirements of the Act and Commission regulations;

* * * * *

■ 36. Section 40.8 is amended by revising paragraph (b) to read as follows:

§ 40.8 Availability of public information.

* * * * *

(b) Any information required to be made publicly available by a registered entity under Sections 5(d)(7), 5a(d)(4) and 5b(c)(2)(L) of the Act, respectively, will be treated as public information by the Commission at the time an order of designation or registration is issued by the Commission, a registered entity is deemed to be designated or registered, or a rule or rule amendment of the registered entity is approved or deemed to be approved by the Commission or can first be made effective the day following its certification by the registered entity.

■ 37. Appendix D to Part 40 is amended by revising the first paragraph to read as follows:

Appendix D to Part 40—Submission Cover Sheet and Instructions

A properly completed submission cover sheet must accompany all rule submissions submitted electronically by a designated contract market, registered derivatives transaction execution facility, or registered derivatives clearing organization to the Secretary of the Commodity Futures Trading Commission, at *submissions@cftc.gov* in a format specified by the Secretary of the Commission. Each submission should include the following:

* * * * *

Issued in Washington, DC, this 5th day of January, 2006, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 06–242 Filed 1–11–06; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9234]

RIN 1545–AU98

Obligations of States and Political Subdivisions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document corrects final regulations (TD 9234) that was published in the **Federal Register** on Monday, December 19, 2005 (70 FR 75028). The final regulations relates to the definition of private activity bond applicable to tax-exempt bonds issued by State and local governments.

DATES: This correction is effective February 17, 2006.

FOR FURTHER INFORMATION CONTACT: Johanna Som de Cerff, (202) 622–3980 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9234) that is the subject of this correction is under section 141 of the Internal Revenue Code.

Need for Correction

As published, TD 9234 contains error that may prove to be misleading and is in need of clarification.

Correction of Publication

■ Accordingly, the publication of the final regulations (TD 9234), that was the subject of FR Doc. 05–23944, is corrected as follows:

§ 1.141–15 [Corrected]

■ On page 75035, column 2, § 1.141–15(j), lines 7 and 8, the language, ''on or after February 17, 2006 and that are subject to the 1997 regulations.'' is corrected to read ''on or after February 17, 2006, and that are subject to the 1997 regulations (defined in paragraph (b)(1) of this section).''.

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 06–250 Filed 1–11–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 501

Economic Sanctions Enforcement Procedures for Banking Institutions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Office of Foreign Assets Control (''OFAC'') of the U.S. Department of the Treasury is issuing this interim final rule, ''Economic Sanctions Enforcement Procedures for Banking Institutions,'' along with a request for comments. This interim final rule supercedes OFAC's proposed rule of January 29, 2003,[1] to the extent that the proposed rule applies to ''banking institutions,'' as defined below. These administrative procedures are published as an appendix to the Reporting, Procedures and Penalties Regulations, 31 CFR Part 501.

DATES: The interim final rule is effective for enforcement cases involving banking institutions commencing on or after February 13, 2006. Written comments may be submitted on or before March 13, 2006.

ADDRESSES: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.treas.gov/offices/enforcement/ofac/comment.html*.
- Fax: Assistant Director of Records, (202) 622–1657.
- Mail: Assistant Director of Records, ATTN: Request for Comments (Enforcement Procedures), Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

[1] 68 FR 4422–4429 (2003).