

Issued in Renton, Washington, on August 20, 2004.

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[FR Doc. 04-19925 Filed 8-31-04; 8:45 am]

BILLING CODE 4910-13-P

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 37 and 38

RIN 3038-AC14

#### Application Procedures for Registration as a Derivatives Transaction Execution Facility or Designation as a Contract Market

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is proposing to revise the application and review procedures for registration as a Derivatives Transaction Execution Facility (DTEF) or designation as a Contract Market (DCM). Specifically, the Commission is proposing to 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 statutory 180-day timeframe and procedures specified in Section 6(a) of the Commodity Exchange Act (CEA or Act). In lieu of the automatic fast-track review (under which applicants were deemed to be registered as DTEFs 30 days, or designated as DCMs 60 days, after receipt of an application), the Commission is proposing to permit applicants to request expedited review and to be registered as a DTEF or designated as a DCM by the Commission not later than 90 days after the date of receipt of the application. The Commission is also proposing, among other things, to more completely identify application content requirements; to 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; to reorganize the paragraphs being revised; and to eliminate duplication. The Commission is proposing these amendments based upon its experience in processing applications and in light of administrative practices that have been

implemented since the rules were first adopted.

**DATES:** Comments must be received by October 1, 2004.

**ADDRESSES:** Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile to (202) 418-5521, or by e-mail to [secretary@cftc.gov](mailto:secretary@cftc.gov). Reference should be made to "Application Procedures." Comments may also be submitted to the Federal eRulemaking Portal: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Duane C. Andresen, Special Counsel, (telephone (202) 418-5492, e-mail [dandresen@cftc.gov](mailto:dandresen@cftc.gov)), Division of Market Oversight, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. This document is also available at <http://www.regulations.gov>.

**SUPPLEMENTARY INFORMATION:** The Commission adopted the application procedures specified in Commission Regulations 37.5<sup>1</sup> and 38.3<sup>2</sup> for boards of trade applying to be registered as DTEFs or designated as DCMs in 2001 when it first implemented the Commodity Futures Modernization Act of 2000 (CFMA).<sup>3</sup> These procedures presume that an application will be submitted and reviewed pursuant to a fast-track procedure under which a board of trade is deemed to be designated as a DCM 60 days after submitting its application,<sup>4</sup> or registered as a DTEF 30 days after submitting its application,<sup>5</sup> unless notified otherwise during the respective review period. These fast-track review periods are substantially shorter than the 180-day review period specified in Section 6(a) of the Act for reviewing DCM and DTEF applications.<sup>6</sup> The rules provide procedures for terminating the fast-track review, including termination by the Commission if it appears that the application's form or substance fails to meet the requirements of the Commission's regulations.<sup>7</sup>

Among other things, the application procedures also generally identify information required to be included in applications for registration as a DTEF<sup>8</sup>

or designation as a DCM,<sup>9</sup> require that the applicant support requests for confidential treatment of information included in the application with reasonable justification,<sup>10</sup> and identify where additional guidance for applicants can be found.<sup>11</sup> The rules also provide procedures for the withdrawal of an application for registration or vacation of registration as a DTEF<sup>12</sup> and for the withdrawal of an application for designation or vacation of designation as a DCM,<sup>13</sup> and specify the extent of the delegation of authority from the Commission to the Director of the Division of Market Oversight, with the concurrence of the General Counsel, with respect to the termination of expedited review procedures.<sup>14</sup>

The Commission is proposing to modify the application procedures in a number of respects. With respect to the timeliness of the review of applications generally, it is proposing to establish the presumption that all applications are submitted for review under the 180-day timeframe specified in Section 6(a) of the Act.<sup>15</sup> An expedited 90-day review could be requested by the applicant, in which case the Commission would register the applicant as a DTEF or designate the applicant as a DCM during or by the end of the 90-day period unless the Commission terminated the expedited review for certain specifically identified reasons. In comparison to the current rules, the Commission is proposing to lengthen the expedited review periods for DCM applications by 30 days and for DTEF applications by 60 days. The Commission believes, based upon its extensive experience in processing DCM applications and in light of certain administrative practices that have developed since these rules were first adopted, that these potentially longer review periods are necessary to ensure a comprehensive review of applications and to meet other public policy objectives.

Specifically, the Commission has reviewed seven DCM applications under the fast-track review procedures and none of these reviews has been completed within the current fast-track 60-day review period. The applications

<sup>9</sup> 17 CFR 38.3(a)(1)(iii).

<sup>10</sup> 17 CFR 37.5(b)(1)(v); 38.3(a)(1)(v).

<sup>11</sup> 17 CFR 37.5(c); 38.3(b).

<sup>12</sup> 17 CFR 37.5(e).

<sup>13</sup> 17 CFR 38.3(d).

<sup>14</sup> 17 CFR 37.5(f); 38.3(e).

<sup>15</sup> Under the current rules, DCM and DTEF applications are routinely reviewed under the fast-track procedures unless the applicant instructs the Commission in writing at the time of 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. See 17 CFR 37.5(b)(1)(vi); 38.3(a)(1)(vi).

<sup>1</sup> 17 CFR 37.5.

<sup>2</sup> 17 CFR 38.3.

<sup>3</sup> See 66 FR 42256 (August 10, 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.*

<sup>4</sup> 17 CFR 38.3(a)(1).

<sup>5</sup> 17 CFR 37.5(b).

<sup>6</sup> See 7 U.S.C. 8(a).

<sup>7</sup> 17 CFR 37.5(d), 38.3(c).

<sup>8</sup> 17 CFR 37.5(b)(1)(iii).

themselves are large and often contain a number of regulatory and operational outsourcing agreements, as well as the technical documents describing electronic order matching systems.<sup>16</sup> The applications frequently need to be substantially amended or supplemented in various ways and unfailingly generate a series of questions 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.<sup>17</sup> This has also lengthened the review process. The proposed 90-day review period should provide the Commission with sufficient time to review these substantial applications and to respond to any public comments. The Commission notes that the proposed 90-day review period, while longer than the current fast-track review periods, would continue to be substantially shorter than the 180-day review period established under the Act.<sup>18</sup>

The Commission also is proposing to modify its internal processing procedures under which an applicant would be registered as a DTEF or designated as a DCM. Under the proposal, an applicant would no longer be deemed to be registered or designated based upon the passage of time (30 days for DTEFs, 60 days for DCMs). If the applicant requested expedited review, the Commission would take affirmative action to register or designate the applicant as a DTEF or DCM, respectively, subject to conditions if appropriate, not later than 90 days after receipt of the application, unless the Commission terminated the expedited review. Thus, registration as a DTEF or designation as a DCM would involve affirmative action by the Commission, which would normally be in the form of issuance of a Commission order. It should be noted that it would be

<sup>16</sup> In this regard, the initial application of one DCM applicant included over 1300 pages of supporting documents and thereafter the applicant submitted hundreds of additional pages before designation.

<sup>17</sup> The Commission has recently proposed revisions to Commission Regulation 40.8 to specify which portions of an application for registration as a DTEF or designation as a DCM will be made public. See 69 FR 44981 (July 28, 2004).

<sup>18</sup> Although the Commission has not yet reviewed an application to become registered as a DTEF under the fast track procedure, it anticipates that such an application would likely also be sizeable and require a similar amount of time to review. Accordingly, the Commission is proposing to conform the DTEF expedited review period to that applicable to DCMs.

possible, under the proposed procedures, for applicants who submit applications that are complete and not amended or supplemented during the review period to be registered as a DTEF or designated as a DCM in less than 90 days.

With respect to the termination of expedited review, the rules provide that fast-track review may be terminated because the application's form or substance fails to meet the requirements of part 37 or 38, as appropriate, or upon written instruction of the applicant during the review period. Based upon its experience in reviewing applications submitted to date and in light of its new practice of posting all such applications on the Commission's Web site for public review and comment, the Commission is proposing to clarify and expand the rationale for terminating expedited review. In addition to the reasons for termination cited above, the Commission is proposing that the expedited review period be terminated if the application is materially incomplete or, as more fully described below, undergoes major amendment or supplementation. The Commission is also proposing to provide for termination of expedited review if an application raises novel or complex issues that require additional time for review. This proposal is responsive to the substantial public interest that the Commission has witnessed to date with respect to DCM applications.

The Commission is further proposing to delete the provision of the rules that would require the Commission, upon terminating fast-track review, to commence a proceeding to deny a DCM or DTEF application upon the request of the applicant. This procedure has proved to be unnecessary to date, and an analogous procedure is available under the statutory review procedure.<sup>19</sup> Finally, the Commission is proposing to amend the expedited review procedures to expressly provide that expedited review would be terminated if an applicant so requests in writing. The Commission stresses that if expedited review were terminated for any of the reasons cited above, the application would continue to be reviewed pursuant to the 180-day statutory procedure.

In order to further enhance the application process, the Commission is proposing to more completely identify and expand the information required to be provided by an applicant under both the statutory 180-day and the expedited 90-day review procedures. The proposal clarifies that the rules required to be included in all applications are those

<sup>19</sup> See 7 U.S.C. 8(a)

rules as defined in Commission Regulation 40.1 and more clearly identifies the documents required to be provided pertaining to the applicant's legal status and governance structure. The Commission anticipates that such documents would include copies of corporate charters, limited liability corporation or partnership agreements, and the like.<sup>20</sup>

The proposal would make it clear that all applicants would be required to submit for review an executed or executable copy of any agreements or contracts entered into or to be entered into by the applicant that enable the applicant to comply with a requirement for trading or registration criterion (DTEFs) or a designation criterion or core principle (DCMs) and that final, signed copies of such documents would be required to be submitted prior to registration or designation. The initial application would be required to include something more than a letter of intent or draft contract or agreement, such as a final contract or agreement signed by at least one of the parties. While the Commission is cognizant that applicants generally prefer to defer the finalization of contracts in order to defer associated costs until registration or designation, it must balance that preference against the assurance that a contract or agreement will actually be executed prior to registration or designation.

With respect to the additional information that would be required to be submitted as part of the application,<sup>21</sup> the proposal requires that applicants submit a "regulatory chart" that describes the manner in which the items included in the application enable the applicant to comply with each requirement for trading and registration criterion (DTEFs) or with each designation criterion and core principle (DCMs). The proposal would also require that the applicant identify any item included in the application that raises novel issues and explain how that item satisfies the requirements for trading or the registration criteria (DTEFs) or the designation criteria or the core principles (DCMs). In addition, the proposal would require that the applicant submit a copy of any manual or other document describing the

<sup>20</sup> The proposal adds the requirement that DTEF application also must include a copy of any documents describing the applicant's legal status and governance structure.

<sup>21</sup> It should be noted that the "additional information" referred to herein is additional only in the sense that the proposal specifically provides that the information must be included in an application. In fact, this information has been requested as part of each of the DCM applications that have been reviewed to date.

manner in which the applicant will conduct trade practice, market, and financial surveillance. Based upon experience in reviewing DCM applications, the Commission recognizes that this additional information is necessary for Commission review of the application when determining whether the applicant satisfies the requirements for trading and registration criteria (DTEFs) or the designation criteria and core principles (DCMs). Finally, the proposal would eliminate 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.

Under the proposal, the items required to be included in an application to be reviewed under the statutory 180-day review procedures are identical to those required to be included in an application to be reviewed under the expedited review procedures with the following exceptions for the expedited review procedure: (1) An applicant must request expedited review, and (2) an application submitted for expedited review must not be amended or supplemented by the applicant, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions. The proposal provides that amending or supplementing an application in a manner that is inconsistent with the above provision would result in termination of the expedited review.

The Commission is also proposing to modify the delegation of authority provisions applicable to applications for registration as a DTEF and for designation as a DCM. Currently, the rules provide for the delegation of authority to the Director of the Division of Market Oversight, with the concurrence of the General Counsel, (1) to terminate the fast-track review of both types of applications and (2) to designate an applicant as a DCM subject to conditions. The Commission is proposing to modify and standardize the delegation of authority as it applies to DTEF and DCM applicants. Thus, under the proposal, the Commission would also delegate to the Director of the Division of Market Oversight, with the concurrence of the General Counsel, the authority to stay the running of the 180-day statutory review period for both

types of applications if they are materially incomplete, as is provided under Section 6(a) of the Act. Because one result of the proposed amendments would be that registration as a DTEF and designation as a DCM would involve affirmative action on the part of the Commission, the proposal would rescind the delegation of the authority to designate the applicant as a DCM subject to conditions.

Finally, the Commission is proposing to reorganize the sequence of paragraphs in the rules where appropriate and to make minor word changes and deletions in order to clarify the application requirements. The Commission is also proposing to delete certain guidance regarding applications for designation as that information duplicates information available elsewhere in part 38.<sup>22</sup>

The Commission continues to encourage applicants to consult with Commission staff prior to formally submitting a DTEF or DCM application to help ensure that an application, once submitted, will be reviewed in a timely manner. The Commission encourages interested parties, particularly prior applicants, to comment upon these proposals.

#### Related Matters

##### A. The 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 rules adopted herein would affect DCMs and DTEFs. The Commission has previously established certain definitions of small entities to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.<sup>23</sup> In its previous determinations, the Commission has concluded that DCMs and DTEFs are not small entities for the purpose of the RFA.<sup>24</sup>

Accordingly, the Commission does not expect the rules, as proposed herein, to have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on this finding and on its

<sup>22</sup> The guidance provided in 17 CFR 38.3(b) is discussed more completely in Appendices A and B to part 38.

<sup>23</sup> 47 FR 18618, 18618–21 (Apr. 30, 1982).

<sup>24</sup> 47 FR 18618, 18619 (Apr. 30, 1982) (discussing DCMs); 66 FR 42256, 42268 (Aug. 10, 2001) (discussing DTEFs).

proposed determination that the trading facilities covered by these rules would not be small entities for purposes of the RFA.

##### B. The Paperwork Reduction Act

This proposed rulemaking affects information-collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

*Collection of Information: Rules* Relating to part 37, Establishing Procedures for Entities to be Registered as Derivatives Transaction Execution Facilities, OMB Control Number 3038–0053. The proposed rules will not change the burden previously approved by OMB. The estimated burden was calculated as follows:

*Estimated number of respondents: 10.*  
*Annual responses by each respondent: 1.*

*Total annual responses: 10.*  
*Estimated average hours per response: 200.*

*Annual reporting burden: 2,000.*  
*Collection of Information: Rules* Relating to part 38, Establishing Procedures for Entities to Become Designated as Contract Markets, OMB Control Number 3038–0052. The proposed rules will not change the burden previously approved by OMB. The estimated burden was calculated as follows:

*Estimated number of respondents: 10.*  
*Annual responses by each respondent: 1.*

*Total annual responses: 10.*  
*Estimated average hours per response: 300.*

*Annual reporting burden: 3,000.* Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503; Attention: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in:

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of collecting information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, (202) 418-5160.

#### C. Cost Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15(a) requires the Commission to “consider the costs and benefits” of the subject rule.

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

The proposed amendments are based upon past experience in reviewing DCM applications, and in light of the Commission’s intention to post all such applications on its Web site for public review and comment, and are intended to facilitate increased flexibility,

consistency and increased public input. The proposed amendments impose limited new submission obligations on entities seeking designation as DCMs or registration as DTEFs with the Commission. The proposed amendments establish the premise that all designation and registration applications are to be reviewed under the statutory 180-day review process unless otherwise requested and set new parameters for the expedited review of such applications and for the termination of such expedited review. These parameters create a useful and forward-looking expedited review process. Under the proposed rules, the Commission will review and take affirmative action upon designation and registration applications in an abbreviated time frame that adequately protects the interests of all market participants and the public. The proposed rules establish flexible expedited review procedures that allow the Commission to efficiently terminate expedited review when requested to do so by the applicant, or when necessary because of the submission of materially incomplete, novel or complex, or substantially amended or supplemented applications.

After considering these factors, the Commission has determined to propose the revisions to parts 37 and 38 set forth below. The Commission specifically invites public comment on its application of the criteria contained in section 15(a) of the Act for consideration. Commenters are also invited to submit any quantifiable data that they may have concerning the costs and benefits of the proposed rule with their comment letters.

#### List of Subjects

##### 17 CFR Part 37

Commodity futures, Commodity Futures Trading Commission.

##### 17 CFR Part 38

Commodity futures, Commodity Futures Trading Commission.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and, in particular, sections 2, 3, 4, 4c, 5, 5a and 8a of the Act, the Commission hereby proposes to amend chapter I of title 17 of the Code of Federal Regulations as follows:

#### PART 37—DERIVATIVES TRANSACTION EXECUTION FACILITIES

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

**Authority:** 7 U.S.C. 2, 5, 6, 6c, 7a and 12a, as amended by the Commodity Futures

Modernization Act of 2000, Appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000).

2. Revise § 37.5 to read as follows:

#### § 37.5 Procedures for registration.

(a) *Notification by contract markets.*

(1) To operate as a registered derivatives transaction execution facility pursuant to Section 5a of the Act, a board of trade that is designated as a contract market, which is not a dormant contract market as defined in Section 40.1 of this chapter, must:

(i) Notify the Commission of its intent to so operate by filing with the Secretary of the Commission at its Washington, DC, headquarters a copy of the facility’s rules (as defined in Section 40.1 of this chapter) or a list of the designated contract market’s rules that apply to the operation of the derivatives transaction execution facility, and a certification by the contract market that it meets:

(A) The requirements for trading of Section 5a(b) of the Act; and

(B) The criteria for registration under Section 5a(c) of the Act.

(ii) Comply with the core principles for operation under Section 5a(d) of the Act and the provisions of this part 37.

(2) Before using the notification procedure of paragraph (a)(1)(i) of this section for registration as a derivatives transaction execution facility, a dormant contract market, as defined in § 40.1 of this chapter, must reinstate its designation under § 38.3(a)(3) of this chapter.

(b) *Application Procedures—(1) Statutory (180-day) review procedures.*

A board of trade desiring to be registered as a derivatives transaction execution facility shall file 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 (b)(2) of this section, the Commission will review the application for registration as a derivatives transaction execution facility pursuant to the 180-day timeframe and procedures specified in Section 6(a) of the Act. The Commission shall approve or deny the application or, if deemed appropriate, register the applicant as a derivatives transaction execution facility subject to conditions.

(i) The applicant must demonstrate that it satisfies the requirements for trading and the criteria for registration of sections 5a(b) and 5a(c) of the Act, respectively, and the provisions of this part 37.

(ii) The application must include the following:

(A) The derivatives transaction execution facility’s rules (as defined in § 40.1 of this chapter);

(B) Any technical manuals and other guides or instructions for users of such facility, descriptions of any system test procedures, tests conducted or test results, descriptions of the trading mechanism or algorithm used or to be used by such facility, and contingency or disaster recovery plans;

(C) A copy of any documents describing the applicant's legal status and governance structure;

(D) An executed or executable copy of any agreements or contracts entered into or to be entered into by the applicant, including partnership or limited liability company, third-party regulatory service, or member or user agreements, that enable or empower the applicant to comply with a requirement for trading or a registration criterion (final, executed copies of such documents must be submitted prior to registration);

(E) A copy of any manual or other document describing, with specificity, the manner in which the applicant will conduct trade practice, market, and financial surveillance;

(F) A document that describes the manner in which the applicable items in § 37.5(b)(1)(ii)(A)–(E) enable or empower the applicant to comply with each requirement for trading and registration criterion (a regulatory chart); and

(G) 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 requirement for trading or condition for registration is not self-evident, an explanation of how that item and the application satisfy the requirements for trading and registration criteria.

(iii) The applicant must identify with particularity information in the application that will be subject to a request for confidential treatment pursuant to § 145.9 of this chapter.

(2) *Ninety-day review procedures.* A board of trade desiring to be registered as a derivatives transaction execution facility may request that its application be reviewed on an expedited basis and that the applicant be registered as a derivatives transaction execution facility not later than 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 § 37.5(c), the Commission will register the applicant as a derivatives transaction execution facility 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 applicant must demonstrate that it satisfies the requirements for trading and the criteria for registration of Sections 5a(b) and 5a(c) of the Act, respectively, and the provisions of this part 37;

(ii) The application must include the items described in Sections 37.5(b)(1)(ii) and (iii); and

(iii) 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 the 90-day review period.

(c) *Termination of 90-day review.* (1) During the 90-day period for review pursuant to paragraph (b)(2) of this section, the Commission shall notify the applicant seeking registration that the Commission is terminating review under this section, and will review the application 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 Section 37.5(b)(2)(iii) above. The Commission shall also terminate review under this section if requested in writing to do so by the applicant.

(2) The 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, the novel or complex issues that require additional time for review, or the amendment or supplement that is inconsistent with § 37.5(b)(2)(iii) above.

(d) *Reinstatement of dormant registration.* Before listing products for trading, a dormant derivatives transaction execution facility as defined in § 40.1 must reinstate its registration under the procedures of paragraphs (a)(1), (b)(1) or (b)(2) 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.

(e) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to

time, with the concurrence of the General Counsel or the General Counsel's delegate, authority to notify the applicant seeking registration 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 (b)(2) of this section is terminated.

(2) The Director may submit to the Commission for its consideration any matter that has been delegated in this paragraph.

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

(f) *Request for withdrawal of application for registration.* An applicant for registration may withdraw its application submitted pursuant to paragraphs (b)(1) or (b)(2) of this section by filing such a request with the Commission at its Washington, DC, headquarters. 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.

(g) *Request for vacation of registration.* A registered derivatives transaction execution facility may vacate its registration under Section 7 of the Act by filing 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 registered by the Commission.

(h) *Guidance for applicants.* Appendix A to this part provides guidance on how the registration criteria in Section 5a(c) of the Act can be satisfied.

## PART 38—DESIGNATED CONTRACT MARKETS

1. 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 the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

2. Revise § 38.3 to read as follows:

### § 38.3 Procedures for designation.

(a) Application procedures—(1) Statutory (180-day) review procedures. A board of trade desiring to be designated as a contract market shall file an application for designation with the Secretary of the Commission at its

Washington, DC, headquarters. Except as provided under the 90-day review procedures described in paragraph (a)(2) of this section, the Commission will review the application for designation as a contract market pursuant to the 180-day timeframe and procedures specified in Section 6(a) of the Act. The Commission shall approve or deny the application or, if deemed appropriate, designate the applicant as a contract market subject to conditions.

(i) The applicant must demonstrate compliance with the criteria for designation of Section 5(b) of the Act, the core principles for operation of Section 5(d) of the Act and the provisions of this part 38.

(ii) The application must include the following:

(A) A copy of the applicant's rules (as defined in Section 40.1 of this chapter) and any technical manuals, other guides or instructions for users of, or participants in, the market, including minimum financial standards for members or market participants;

(B) A description of the trading system, algorithm, security and access limitation procedures with a timeline for an order from input through settlement, and a copy of any system test procedures, tests conducted, test results and contingency or disaster recovery plans;

(C) A copy of any documents describing the applicant's legal status and governance structure, including governance fitness information;

(D) An executed or executable copy of any agreements or contracts entered into or to be entered into by the applicant, including partnership or limited liability company, third-party regulatory service, or member or user agreements, that enable or empower the applicant to comply with a designation criterion or core principle (final, executed copies of such documents must be submitted prior to designation);

(E) A copy of any manual or other document describing, with specificity, the manner in which the applicant will conduct trade practice, market, and financial surveillance;

(F) A document that describes the manner in which the applicable items in § 38.3(a)(1)(ii)(A) through (E) enable or empower the applicant to comply with each designation criterion and core principle (a regulatory chart); and

(G) To the extent that any of the items in § 38.3(a)(1)(ii)(A) through (E) raise issues that are novel, or for which compliance with a designation criterion or a core principle is not self-evident, an explanation of how that item and the application satisfy the designation criteria or the core principles.

(iii) The applicant must identify with particularity information in the application that will be subject to a request for confidential treatment pursuant to Section 145.9 of this chapter.

(2) *Ninety-day review procedures.* A board of trade desiring to be designated as a contract market may request that its application be reviewed on an expedited basis and that the applicant be designated as a contract market not later than 90 days after the date of receipt of the application for designation by the Secretary of the Commission. The 90-day period shall begin on the first business day (during the business hours defined in Section 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 § 38.3(b), the Commission will designate the applicant as a contract market during the 90-day period. If deemed appropriate by the Commission, the designation may be subject to such conditions as the Commission may stipulate.

(i) The applicant must demonstrate compliance with the criteria for designation of section 5(b) of the Act, the core principles for operation of section 5(d) of the Act and the provisions of this part 38;

(ii) The application must include the items described in §§ 38.3(a)(1)(ii) and (iii); and

(iii) 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 the 90-day review period.

(b) *Termination of 90-day review.* (1) During the 90-day period for review pursuant to paragraph (a)(2) of this section, the Commission shall notify the applicant seeking designation that the Commission is terminating review under this section, and will review the application 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 § 38.3(a)(2)(iii) above. The Commission shall also terminate review under this

section if requested in writing to do so by the applicant.

(2) The 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, the novel or complex issues that require additional time for review, or the amendment or supplement that is inconsistent with § 38.3(a)(2)(iii) above.

(c) *Reinstatement of dormant designation.* Before listing or relisting products for trading, a dormant designated contract market as defined in § 40.1 of this chapter must reinstate its designation under the procedures of paragraph (a)(1) or (a)(2) 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.

(d) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, with the concurrence of the General Counsel or the General Counsel's delegate, authority to notify the 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)(2) of this section is terminated.

(2) The Director may submit to the Commission for its consideration any matter that has been delegated in this paragraph.

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

(e) *Request for withdrawal of application for designation.* An applicant for designation may withdraw its application submitted pursuant to paragraphs (a)(1) or (a)(2) of this section by filing such a request with the Commission at its Washington, DC, headquarters. Withdrawal of an application for designation 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 designation was pending with the Commission.

(f) *Request for vacation of designation.* A designated contract market may vacate its designation under Section 7 of the Act by filing such a request with the Commission at its Washington, DC, headquarters. Vacation of designation 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) *Guidance for applicants.*

Appendix A to this part provides guidance on how the criteria for designation under section 5(b) of the Act can be satisfied. Appendix B to this part provides guidance on how the core principles of section 5(d) of the Act can be satisfied.

Issued in Washington, DC, this 26th day of August, 2004, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 04-19946 Filed 8-31-04; 8:45 am]

BILLING CODE 6351-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-124405-03]

RIN 1545-BC13

#### Optional 10-Year Writeoff of Certain Tax Preferences; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice of proposed rulemaking.

**SUMMARY:** This document contains corrections to a notice of proposed rulemaking that was published in the **Federal Register** on July 20, 2004 (69 FR 43367), that provides guidance on the time and manner of making an election under section 59(e) of the Internal Revenue Code.

**FOR FURTHER INFORMATION CONTACT:** Eric B. Lee (202) 622-3120 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The notice of proposed rulemaking (REG-124405-03) that is the subject of this correction is under section 59(e) of the Internal Revenue Code.

##### Need for Correction

As published, REG-124405-03 contains errors that may prove to be misleading and are in need of clarification.

##### Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG-124405-03), that was the subject of FR Doc. 04-16474, is corrected as follows:

1. On page 43368, column 2, in the preamble under the paragraph heading “*Explanation of Provisions*”, third paragraph, line 18, the language, “expenditures subject to the section 59(e)” is corrected to read “Expenditures subject to the section 59(e) election”.

#### § 1.59-1 [Corrected]

2. On page 43369, column 1, § 1.59-1(b)(1), line 8, the language, “the section 59(e) begins. A taxpayer” is corrected to read “the section 59(e) election begins. A taxpayer”.

3. On page 43369, column 1 § 1.59-1(b)(1), line 19, the language, “section 59(e) begins. Additionally, the” is corrected to read “section 59(e) election begins. Additionally, the”.

**Cynthia E. Grigsby,**

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

[FR Doc. 04-19947 Filed 8-31-04; 8:45 am]

BILLING CODE 4830-01-P

## NATIONAL MEDIATION BOARD

### 29 CFR Part 1210

#### Administration of Arbitration Programs

**AGENCY:** National Mediation Board.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The National Mediation Board (NMB) is extending the public comment period for receipt of comments on its notice of proposed rulemaking entitled “Administration of Arbitration Programs” that was published in the **Federal Register** on August 9, 2004 (69 FR 48177).

**DATES:** Comments must be in writing and must be received by September 20, 2004.

**ADDRESSES:** Submit written comments to: Roland Watkins, Director of Arbitration/NRAB Administrator, National Mediation Board, 1301 K Street, NW., Suite 250—East, Washington, DC 20005. Attn: NMB Docket No. 2003-01N. You may submit your comments via letter, or electronically through the Internet to the following address: [arb@nmb.gov](mailto:arb@nmb.gov). If you submit your comments electronically, please put the full body of your comments in the text of the electronic message and also as an attachment readable in MS Word. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 692-5086. Please cite

NMB Docket No. 2003-01N in your comment.

#### FOR FURTHER INFORMATION CONTACT:

Roland Watkins, NRAB Administrator, 1301 K Street, NW., Suite 250 East, Washington, DC 20005 (telephone: 202-692-5000).

#### SUPPLEMENTARY INFORMATION: On

Monday, August 8, 2004, the National Mediation Board published a notice of proposed rulemaking requesting public comment on the Board’s proposal to establish a new Part 1210 in its rules concerning the “Administration of Arbitration Programs—National Railroad Adjustment Board (NRAB), Public Law Boards (PLBs) and Special Boards of Adjustment (SBAs) (69 FR 48177). The closing date for receipt of public comments was September 8, 2004.

After further consideration, the Board is extending the comment period by twelve (12) days. Therefore, the closing date for receipt of public comments is now September 20, 2004.

**June D.W. King,**

*Acting National Railroad Adjustment Board Administrator.*

[FR Doc. 04-19878 Filed 8-31-04; 8:45 am]

BILLING CODE 7550-01-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[CGD07-04-101]

RIN 1625-AA08

#### Special Local Regulations; Columbus Day Regatta, Biscayne Bay, Miami, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish permanent local regulations for the Columbus Day Regatta. The event is held annually from 10 a.m. to 5 p.m. on Saturday and Sunday of Columbus Day weekend on Biscayne Bay, Miami, Florida. The regulations create a regulated area that temporarily limits the movement of non-participant vessels. These regulations are needed to provide for the safety of life on navigable waters during the event.

**DATES:** Comments and related material must reach the Coast Guard on or before October 1, 2004.

**ADDRESSES:** You may mail comments and related material to Sector Miami, 100 MacArthur Causeway, Miami