May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Fort Worth Aircraft Certification Office, FAA. For information on any already approved alternative methods of compliance, contact Garry D. Sills, Aerospace Engineer, Rotorcraft Directorate, ASW–150, 2601 Meacham Blvd., Fort Worth, Texas 76193; telephone: (817) 222–5154; facsimile: (817) 222–5960.

(1) Alternative methods of compliance (AMOC) approved for AD 91–03–15 are not considered approved as an AMOC for this AD.

(2) You may have already done the actions of this AD per an AMOC from 91–03–15. If so, no further action is required.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Mooney Airplane Company, Inc. Service Bulletin M20–283A, dated March 30, 2004. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Mooney Airplane Company, Inc., Louis Schreiner Field, Kerrville, Texas 78028; telephone: (830) 896–6000. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2004–19618.

Issued in Kansas City, Missouri, on November 12, 2004.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–25595 Filed 11–19–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19325; Airspace Docket No. 04–ACE–54]

Modification of Class E Airspace; Dodge City, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Tuesday, October 19, 2004, (69 FR 61439) (FR Doc. 04–23387). It corrects errors in the legal descriptions of the Class E airspace area designated as a surface area and the Class E airspace area extending upward from 700 feet above the surface at Dodge City, KS.

DATES: This direct final rule is effective on 0901 UTC, January 20, 2005.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

History

Federal Register document 04–23387, published on Tuesday, October 19, 2004 (69 FR 61439), modified the Class E airspace area designated as a surface area and the Class E airspace area extending upward from 700 feet above the surface at Dodge City, KS. The modification corrected discrepancies in the Dodge City Regional Airport airport reference point (ARP) used in the legal descriptions, corrected the airspace dimensions to protect for diverse departures, established an extension to the airspace area extending upward from 700 feet above the surface and brought the legal descriptions of the Dodge City, KS Class E airspace areas into compliance with FAA Orders 7400.2E, Procedures for Handling Airspace Matters, and 8260.19C, Flight Procedures and Airspace. However, the Dodge City Regional Airport ARP has since been recomputed requiring a further revision to the Dodge City, KS Class E airspace areas.

■ Accordingly, pursuant to the authority delegated to me, the legal descriptions of the Class E airspace area designated as a surface area and the Class E airspace area extending upward from 700 feet above the surface at Dodge City, KS, as published in the **Federal Register** on Tuesday, October 19, 2004, (69 FR 61439) (FR Doc. 04–23387) are corrected as follows:

PART 71—[CORRECTED]

§ 71.1 [Corrected]

■ On page 61440, Column 2, change the third paragraph to read:

"ACE KS E2 Dodge City, KS

Dodge City Regional Airport, KS
(Lat. 37°45′53″ N., long. 99°58′00″ W.)

Within a 4.2-mile radius of Dodge City Regional Airport.''

■ On page 61440, Column 2, change the fifth paragraph to read:

"ACE KS E5 Dodge City, KS

Dodge City Regional Airport, KS
(Lat. 37°45′53″ N., long. 99°58′00″ W.)
Dodge City VORTAC
(Lat. 37°51′02″ N., long. 100°00′20″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Dodge City Regional Airport and within 1.9 miles each side of the Dodge City VORTAC 160° radial extending from the 6.7-mile radius of the airport to 17 miles southeast of the VORTAC.''

Issued in Kansas City, MO, on November 4, 2004.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–25700 Filed 11–19–04; 8:45 am]

BILLING CODE 4910–13–M

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: Final rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is amending its regulations to revise the application and review procedures for registration as a Derivatives Transaction Execution Facility (DTEF) or designation as a Contract Market (DCM). 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 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 amendments 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 amendments also, among other things, more completely identify application content requirements; 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; reorganize the paragraphs being revised; and eliminate duplication. The amendments are responsive to the Commission's experience in processing applications and reflect administrative practices that have been implemented since the rules were first adopted.

DATES: Effective December 22, 2004.

FOR FURTHER INFORMATION CONTACT: Duane C. Andresen, Special Counsel, (telephone 202–418–5492, e-mail *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:

I. Background

A. Overview

The Commission adopted the application procedures specified in Commission Regulations 37.5 [1] and 38.3 [2] 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).[3] 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,[4] or registered as a DTEF 30 days after submitting its application,[5] 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.[6] 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.[7]

Among other things, the application procedures also generally identify information required to be included in applications for registration as a DTEF [8] or designation as a DCM,[9] require that the applicant support requests for confidential treatment of information included in the application with reasonable justification,[10] and identify where additional guidance for applicants can be found.[11] The rules also provide procedures for the withdrawal of an application for registration or vacation of registration as a DTEF [12] and for the withdrawal of an application for designation or vacation of designation as a DCM,[13] 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.[14]

B. The Proposed Amendments

On September 1, 2004, the Commission published proposed amendments to its part 37 and 38 regulations governing application procedures.[15] The proposed amendments would modify the application procedures in a number of respects. With respect to the timeliness of the review of applications generally, the proposed amendments would establish the presumption that all applications are submitted for review under the 180-day timeframe specified in section 6(a) of the Act.[16] 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. The proposed amendments would lengthen the expedited review periods for DCM applications by 30 days and for DTEF applications by 60 days. The longer time periods were believed to be necessary, based upon the Commission's review of eight DCM applications under the current DCM expedited review period, to ensure a comprehensive review of applications and to meet other public policy objectives, including the Commission's policy to promote transparency in Commission operations, implemented in August of 2003, by providing for the posting of all such applications on the Commission's website for a period of at least 15 days for public review and comment.[17] The proposed 90-day review period should provide sufficient time to review applications and to respond to any public comments. While longer than the current fast-track review periods, the 90-day review period would be substantially shorter than the 180-day review period established under the Act.[18]

The proposed amendments would also modify the Commission's 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 would be possible, under the proposed procedures, for applicants who submit

[1] 17 CFR 37.5.

[2] 17 CFR 38.3.

[3] *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, 7 U.S.C. 1 *et seq*.

[4] 17 CFR 38.3(a)(1).

[5] 17 CFR 37.5(b).

[6] *See* 7 U.S.C. 8(a).

[7] 17 CFR 37.5(d), 38.3(c).

[8] 17 CFR 37.5(b)(1)(iii).

[9] 17 CFR 38.3(a)(1)(iii).

[10] 17 CFR 37.5(b)(1)(v); 38.3(a)(1)(v).

[11] 17 CFR 37.5(c); 38.3(b).

[12] 17 CFR 37.5(e).

[13] 17 CFR 38.3(d).

[14] 17 CFR 37.5(f); 38.3(e).

[15] 69 FR 53367 (September 1, 2004).

[16] 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).

[17] 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 routinely be made public. *See* 69 FR 44981 (July 28, 2004).

[18] 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 require a review period similar to that experienced in the review of DCM applications. Accordingly, the Commission proposed to conform the DTEF expedited review period to that applicable to DCMs.

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. The proposed amendments would clarify and expand the rationale for terminating expedited review and would provide that the expedited review period also could be terminated if the application is materially incomplete, raises novel or complex issues that require additional time for review or, as more fully described below, undergoes major amendment or supplementation. 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. Finally, the proposed amendments would 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.[19]

In order to further enhance the application process, the proposed amendments would 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 would clarify that the rules required to be included in all applications are those rules as defined in Commission Regulation 40.1 and would more clearly identify 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.[20]

The proposed amendments 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 may 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,[21] the proposed amendments would require 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 proposed amendments would require that the applicant submit a copy of any manual or other document describing the 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 proposed amendments 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 proposed amendments, the items required to be included in an application to be reviewed under the statutory 180-day review procedures would be 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 applicants and applications: (1) The applicant must request expedited review; and (2) the application 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 would provide 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 proposed amendments would also modify and standardize 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. Under the proposed amendment, 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 proposed amendments would 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 proposal would also delete certain guidance regarding applications for designation as that information

[19] *See* 7 U.S.C. 8(a).

[20] The proposal adds the requirement that DTEF applications also must include a copy of any documents describing the applicant's legal status and governance structure.

[21] It should be noted that the ''additional information'' referred to herein is additional only in the sense that the proposal specifically codifies the information that must be included in an application. In fact, Commission staff has been requesting this type of information from each of the DCM applicants that have applied.

duplicates information available elsewhere in Part 38.[22]

C. Comments and Final Rule

In response to the proposed amendments, the Commission received comment letters from the Chicago Mercantile Exchange and the Chicago Board of Trade (CBOT), both of which voiced support for the proposed amendments. With respect to the proposed application content requirements, however, the CBOT, suggested that the Commission should also require submission of documents detailing the applicant's plans to offer payment for order flow, or other incentives that could encourage wash trading or compromise the fiduciary responsibilities of intermediaries, as well as documentation of plans to allow or encourage trading off the centralized market. The Commission has carefully considered this suggestion, but does not believe that the application content requirements need to be expanded to include this information.

If an applicant's plans regarding payment for order flow [23] or other incentive plans are established at the time of the application, it is expected that they would be included in the application because they would be considered to be rules and the applicant's proposed rules are required to be submitted as part of the application. The same is true with respect to plans to allow or encourage trading off the centralized market, such as block trading. Of course, any proposal to implement incentive and/or off-centralized market trading plans after DCM designation or DTEF registration would have to be submitted to the Commission by the registrant as rule changes, either seeking Commission approval or certifying compliance with designation criteria and core principles (DCM) or with core principles (DTEF) as required under the Act.

Although the Commission expects that an application represents the applicant's actual business plan at the time of its submission, the Commission has never required an applicant to reveal all of its potential future plans, which may be in various stages of development and indeed may never be adopted, when considering whether the application satisfies the designation criteria and core principles. Commission staff appropriately considers the materials filed and representations made by an applicant in drawing conclusions as to whether designation or registration is warranted. Subsequent to designation or registration, the DCM or DTEF may adopt changes to its rules and procedures; however, under the Act, DCMs and DTEFs must, on a continuing basis, comply with all designation criteria and core principles (DCMs) and core principles (DTEFs). In implementing changes to their business plans, DCMs and DTEFs seek Commission approval or certify compliance with the designation criteria and core principles, as applicable, as required under the Act. The Commission considers whether to approve new rules or rule amendments or whether to take action concerning certifications when a DCM or DTEF proposes to implement its revised plans.[24]

For the reasons cited above, the Commission does not believe that the application content requirements need to be expanded to include documents detailing the applicant's incentive plans or documentation of plans to allow or encourage trading off the centralized market. After careful review and consideration of the comments received, the Commission has determined to adopt the proposed amendments to the application procedures as written. The Commission continues to encourage would-be applicants to consult with Commission staff prior to formally submitting a DTEF or DCM application to help ensure that an application, once formally submitted, will be reviewed in a timely manner.

[22] The guidance provided in 17 CFR 38.3(b) is discussed more completely in Appendices A and B to Part 38.

[23] The term ''payment for order flow'' is more commonly used to describe incentives offered by securities exchanges or market makers to securities brokers to direct orders to a particular exchange or an over-the-counter (OTC) dealer. Commission staff generally views these plans as volume discount programs because their primary purpose is to enhance volume by discounting transaction costs.

[24] For instance, when reviewing an incentive program proposed to be adopted by a DCM, Commission staff's regulatory analysis of the proposed rule would focus on the manner of implementation and the potential for distorting open, competitive, and efficient trading by facilitating illegal trading practices, such as wash or fictitious trading. DCMs are obligated by Core Principle 2 to monitor trading for trade practice abuses. Staff would also analyze a plan's potential for eroding fiduciary obligations owed by futures brokers to customers. Core Principle 12 requires that DCMs establish and enforce rules that protect market participants from abusive trading practices committed by any party acting as an agent for a participant, and in a situation where a broker handles an order that could be executed at more than one exchange, Commission staff would want to ensure that an incentive plan does not compromise the broker's fiduciary obligations.

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.[25] In its previous determinations, the Commission has concluded that DCMs and DTEFs are not small entities for the purpose of the RFA.[26]

In the proposed rules, the Commission solicited comment on whether the proposed amendments would have a significant impact on a substantial number of small entities. The Commission received no comments in response to this request. Accordingly, the Commission hereby determines that the rules, as adopted herein, will not have a significant economic impact on a substantial number of small entities. Therefore, the Acting 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.

B. The Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), the Commission submitted a copy of the proposed rule amendments to the Office of Management and Budget for its review. The Commission did not receive any public comments relative to its analysis of paperwork burdens associated with this rulemaking.

C. 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 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) simply requires the Commission to ''consider the costs and benefits'' of its action.

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)

[25] 47 FR 18618, 18618–21 (April 30, 1982).

[26] 47 FR 18618, 18619 (April 30, 1982) (discussing DCMs); 66 FR 42256, 42268 (August 10, 2001) (discussing DTEFs).

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 Commission published an analysis of costs and benefits when it proposed the rule amendments that have now been adopted.[27] The Commission did not receive any public comments pertaining to the analysis.

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 amends 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 § 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 § 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) through (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) through (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 § 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

[27] 69 FR 53367, 53370 (September 1, 2004).

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 § 37.5(b)(2)(iii).

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

(3) 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).

(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 paragraph (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 § 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 § 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 § 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).

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

(3) 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).

(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 paragraph (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, on November 12, 2004, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–25614 Filed 11–19–04; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Trenbolone Acetate and Estradiol Benzoate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fort Dodge Animal Health, Division of Wyeth. The supplemental NADA provides for the addition of statements to labeling of subcutaneous implants containing trenbolone acetate and estradiol benzoate warning against the use of these products in calves to be processed for veal.

DATES: This rule is effective November 22, 2004.

FOR FURTHER INFORMATION CONTACT: Eric S. Dubbin, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0232, e-mail: *edubbin@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Division of Wyeth, 800 Fifth St. NW., Fort Dodge, IA 50501, filed a supplement to NADA 141–043 for SYNOVEX PLUS (trenbolone acetate and estradiol benzoate) and SYNOVEX CHOICE (trenbolone acetate and estradiol benzoate), two subcutaneous implants products used in steers and heifers fed in confinement for slaughter for increased rate of weight gain and/or improved feed efficiency. The supplemental NADA provides for the addition of statements to labeling warning against the use of these products in calves to be processed for veal. The supplemental application is approved as of October 28, 2004, and the regulations are amended in 21 CFR 522.2478 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part