

§ 40.5

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

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

(9) Any other rule:

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

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

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

[71 FR 1969, Jan. 12, 2006, as amended at 73 FR 8605, Feb. 14, 2008; 74 FR 12202, Mar. 23, 2009]

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

(a) *Request for approval of rules.* Pursuant to Section 5c(c) of the Act and §§ 37.7, 38.4 and 39.4 of this chapter, a registered entity may request that the Commission approve a new or dormant rule prior to implementation, or if initially submitted under §§ 40.2 or 40.6 of this chapter, subsequent to implementation. A submission requesting approval shall:

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

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

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

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

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

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

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

(8) Include a request for confidential treatment as permitted under the procedures of § 40.8.

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

(b) *Forty-five day review.* All rules submitted for Commission approval under paragraph (a) of this section shall be deemed approved by the Commission under section 5c(c) of the Act,

forty-five days after receipt by the Commission, or at the conclusion of such extended period as provided under paragraph (c) of this section, unless notified otherwise within the applicable period, if:

(1) The submission complies with the requirements of paragraphs (a)(1)(i) through (vi) of this section, and

(2) The submitting entity does not amend the proposed rule or supplement the submission, except as requested by the Commission, during the pendency of the review period. Any amendment or supplementation not requested by the Commission will be treated as the submission of a new filing under this section.

(c) *Commencement and extension of time for review.* The Commission shall commence the review period in paragraph (b) of this section for a compliant submission under §40.4(b)(9) ten business days after its receipt and further may extend the review period in paragraph (b) of this section for any approval request for:

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

(2) Such additional period as the submitting entity has so instructed the Commission in writing.

(d) *Notice of non-approval.* The Commission at any time during its review under this section may notify the submitting entity that it will not, or is unable to, approve the proposed rule or rule amendment. This notification will briefly specify the nature of the issues raised and the specific provision of the Act or regulations, including the form or content requirements of this section, that the proposed rule would violate, appears to violate or the violation of which cannot be ascertained from the submission.

(e) *Effect of non-approval.* (1) Notification to a registered entity under paragraph (d) of this section of the Commission's refusal to approve a proposed

rule or rule amendment of a registered entity does not prejudice the entity from subsequently submitting a revised version of the proposed rule or rule amendment for Commission approval or from submitting the rule or rule amendment as initially proposed pursuant to a supplemented submission.

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

(f) *Expedited approval.* Notwithstanding the provisions of paragraph (b) of this section, changes to terms and conditions of a product that are consistent with the Act and Commission regulations and with standards approved or established by the Commission in a written notification to the registered entity of the applicability of this paragraph (f) shall be deemed approved by the Commission at such time and under such conditions as the Commission shall specify in the notice, provided, however, that the Commission may, at any time, alter or revoke the applicability of such a notice to any particular product.

[66 FR 42283, Aug. 10, 2001, as amended at 67 FR 62879, Oct. 9, 2002; 69 FR 67505, Nov. 18, 2004; 71 FR 1969, Jan. 12, 2006; 73 FR 8605, Feb. 14, 2008; 74 FR 17394, Apr. 15, 2009]

§ 40.6 Self-certification of rules.

(a) *Required certification.* Unless permitted otherwise by §37.7 of this chapter, a registered entity must comply with the following conditions prior to the implementation of any rule that has not obtained Commission approval under §40.5 of this chapter or that remains dormant subsequent to being submitted under this section or approved under §40.5 of this chapter:

(1) The rule or rule amendment is not a rule or rule amendment of a designated contract market that materially changes a term or condition of a contract for future delivery of an agricultural commodity enumerated in section 1a(4) of the Act or an option on