

## § 40.6

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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]

### § 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 such a contract or commodity in a delivery month having open interest;

(2) The registered entity has filed its submission electronically in a format specified by the Secretary of the Commission with the Secretary of the Commission at [submissions@cftc.gov](mailto:submissions@cftc.gov), the relevant branch chief at the regional office having local jurisdiction over the registered entity, and, for filings submitted by a designated contract market or registered derivatives transaction execution facility, the Division of Market Oversight at [DMOSubmissions@cftc.gov](mailto:DMOSubmissions@cftc.gov), and the Commission has received the submission at its headquarters by the open of business on the business day preceding implementation of the rule; *provided, however,* rules or rule amendments implemented under procedures of the governing board to respond to an emergency as defined in § 40.1, shall, if practicable, be filed with the Commission prior to the implementation or, if not practicable, be filed with the Commission at the earliest possible time after implementation, but in no event more than twenty-four hours after implementation; and

(3) The rule submission includes:

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

case of a rule or rule amendment that responds to an emergency, “Emergency Rule Certification” should be noted in the Description section of the submission coversheet);

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

(iii) The date of implementation;

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

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

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

(b) *Stay.* The Commission may stay the effectiveness of a rule implemented pursuant to paragraph (a) of this section during the pendency of Commission proceedings for filing a false certification or to alter or amend the rule pursuant to section 8a(7) of the Act. The decision to stay the effectiveness of a rule in such circumstances shall not be delegable to any employee of the Commission.

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

(1) The registered entity provides to the Commission at least weekly a summary notice of all rule changes made effective pursuant to this paragraph during the preceding week. Such notice must be labeled “Weekly Notification of Rule Changes” and need not be filed for weeks during which no such actions have been taken. One copy of each such

submission shall be furnished electronically in a format specified by the Secretary of the Commission; and

(2) The rule governs:

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

(ii) *Delivery standards set by third parties.* Changes to grades or standards of commodities deliverable on a product that are established by an independent third party and that are incorporated by reference as product terms, provided that the grade or standard is not established, selected or calculated solely for use in connection with futures or option trading and such changes do not affect deliverable supplies or the pricing basis for the product;

(iii) *Index products.* Routine changes in the composition, computation, or method of selection of component entities of an index (other than routine changes to securities indexes to the extent that such changes are not described in paragraph (c)(3)(ii)(F) of this section) referenced and defined in the product's terms, that do not affect the pricing basis of the index, which are made by an independent third party whose business relates to the collection or dissemination of price information and which was not formed solely for the purpose of compiling an index for use in connection with a futures or option product;

(iv) *Option contract terms.* Changes to option contract rules, which may qualify for implementation without notice pursuant to paragraph (c)(3)(ii)(G) of this section, relating to the strike price listing procedures, strike price intervals, and the listing of strike prices on a discretionary basis;

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

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

party and that are incorporated by reference as product terms.

(vii) *Approved brands.* Changes in lists of approved brands or markings pursuant to previously certified or Commission approved standards or criteria;

(viii) *Delivery facilities and delivery service providers.* Changes in lists of approved delivery facilities and delivery service providers (including weighmasters, assayers, and inspectors) at a delivery location, pursuant to previously certified or Commission approved standards or criteria; or

(ix) *Trading Months.* The initial listing of trading months, which may qualify for implementation without notice pursuant to (c)(3)(ii)(H) of this section, within the currently established cycle of trading months.

(3) *Notification of rule amendments not required.* Notwithstanding the rule certification requirements of section 5c(c)(1) of the Act and of paragraphs (a)(2) and (a)(3) of this section, registered entity may place the following rules or rule amendments into effect without certification or notice to the Commission if the following conditions are met:

(i) The registered entity maintains documentation regarding all changes to rules; and

(ii) The rule governs:

(A) *Transfer of membership or ownership.* Procedures and forms for the purchase, sale or transfer of membership or ownership, but not including qualifications for membership or ownership, any right or obligation of membership or ownership or dues or assessments;

(B) *Administrative procedures.* The organization and administrative procedures of a registered entity governing bodies such as a Board of Directors, Officers and Committees, but not voting requirements, Board of Directors or Committee composition requirements or procedures, use or disclosure of material non-public information gained through the performance of official duties, or requirements relating to conflicts of interest;

(C) *Administration.* The routine, daily administration, direction and control of employees, requirements relating to gratuity and similar funds, but not guaranty, reserves, or similar funds; declaration of holidays, and changes to

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facilities housing the market, trading floor or trading area;

(D) *Standards of decorum.* Standards of decorum or attire or similar provisions relating to admission to the floor, badges, or visitors, but not the establishment of penalties for violations of such rules; and

(E) *Fees.* Fees or fee changes that are less than \$1.00 or that relate to matters such as dues, badges, telecommunication services, booth space, real time quotations, historical information, publications, software licenses or other matters that are administrative in nature.

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

(G) *Option contract terms.* For registered entities that are in compliance with the daily reporting requirements of §16.01(b) of this chapter, changes to option contract rules relating to the strike price listing procedures, strike price intervals, and the listing of strike prices on a discretionary basis.

(H) *Trading months.* For registered entities that are in compliance with the daily reporting requirements of §16.01(a) of this chapter, the initial listing of trading months which are within the currently established cycle of trading months.

[66 FR 42283, Aug. 10, 2001, as amended at 67 FR 62879, Oct. 9, 2002; 69 FR 67505, Nov. 18, 2004; 71 FR 1970, Jan. 12, 2006; 73 FR 8605, Feb. 14, 2008]

EFFECTIVE DATE NOTE: At 74 FR 12202, Mar. 23, 2009, §40.6 was amended by revising paragraphs (a)(2), (c)(3)(ii)(G), and (c)(3)(ii)(H), effective Apr. 22, 2009. For the convenience of the user, the revised text is set forth as follows:

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(a) \* \* \*

(2) The registered entity has filed its submission electronically in a format specified by the Secretary of the Commission with the Secretary of the Commission at *submissions@cftc.gov*, the relevant branch chief at the regional office having local jurisdiction over the registered entity, and, for filings submitted by a designated contract market, registered derivatives transaction execution facility, or electronic trading facility on which significant price discovery

contracts are traded or executed, the Division of Market Oversight at *DMOSubmissions@cftc.gov*, and the Commission has received the submission at its headquarters by the open of business on the business day preceding implementation of the rule; *provided, however*, rules or rule amendments implemented under procedures of the governing board to respond to an emergency as defined in §40.1, shall, if practicable, be filed with the Commission prior to the implementation or, if not practicable, be filed with the Commission at the earliest possible time after implementation, but in no event more than twenty-four hours after implementation; and

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) \* \* \*

(G) *Option contract terms.* For registered entities that are in compliance with the daily reporting requirements of §16.01 of this chapter, changes to option contract rules relating to the strike price listing procedures, strike price intervals, and the listing of strike prices on a discretionary basis.

(H) *Trading Months.* For registered entities that are in compliance with the daily reporting requirements of §16.01 of this chapter, the initial listing of trading months which are within the currently established cycle of trading months.

§ 40.7 Delegations.

(a) *Procedural matters—(1) Review of products or rules.* The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Clearing and Intermediary Oversight and separately to the Director of the Division of Market Oversight or to the Director's delegatee with the concurrence of the General Counsel or the General Counsel's delegatee, authority to request under §40.3(b)(2) or §40.5(b)(2) that the entity requesting approval amend the proposed product, rule or rule amendment or supplement the submission, to notify a submitting entity under §40.3(c) or §40.5(c) that the time for review has been extended, and to notify the submitting entity under §40.3(d) or §40.5(d) that the Commission is not approving, or is unable to approve, the proposed product, rule or rule amendment.

(2) *Emergency rules.* The Commission hereby delegates authority to the Directors of Division of Market Oversight