

§ 40.4

Commission or for correction of typographical errors, renumbering or other such nonsubstantive revisions, during that period. Any voluntary, substantive amendment by the submitting entity will be treated as a new submission under this section.

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

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

(2) Such extended period as the submitting designated contract market or registered derivatives transaction execution facility so instructs 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 product or instrument. 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 paragraph (a) of this section, that the product 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 submitting entity under paragraph (d) of this section of the Commission's refusal to approve a product or instrument does not prejudice the entity from subsequently submitting a revised version of the product or instrument for Commission approval or from submitting the product or instrument as initially proposed pursuant to a supplemented submission.

(2) Notification to a submitting registered entity under paragraph (d) of this section of the Commission's refusal to approve a product shall be presumptive evidence that the entity may

17 CFR Ch. I (4-1-11 Edition)

not truthfully certify under § 40.2 that the same, or substantially the same, product does not violate the Act or regulations thereunder.

[66 FR 42283, Aug. 10, 2001, as amended at 67 FR 62879, Oct. 9, 2002; 69 FR 67505, Nov. 18, 2004; 71 FR 1968, Jan. 12, 2006; 73 FR 8605, Feb. 14, 2008; 74 FR 12202, Mar. 23, 2009; 74 FR 17394, Apr. 15, 2009]

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

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

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

(1) Changes in trading hours;

(2) For each delivery location, changes in lists of approved delivery facilities and delivery service providers, including weighmasters and inspectors, pursuant to previously set standards or criteria;

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

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

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

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

Commodity Futures Trading Commission

§ 40.5

(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,