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market or derivatives transaction execution facility to carry out its responsibilities.

(6) Include the certifications required in § 41.22 for product approval of a commodity that is a security future or a security futures product as defined in Sections 1a(31) or 1a(32) of the Act, respectively;

(7) Identify with particularity information in the submission (except for the product's terms and conditions which are made publicly available at the time of submission) that will be subject to a request for confidential treatment and support that request for confidential treatment with reasonable justification;

(8) Include the filing fee required under Appendix B to this part; and

(9) Include, if requested by Commission staff, additional evidence, information or data relating to whether the contract meets, initially or on a continuing basis, any of the specific requirements of the Act, or any other requirement for designation under the Act or Commission regulations or policies thereunder.

(b) *Forty-five day review.* All products submitted for Commission approval under this paragraph shall be deemed approved by the Commission 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 paragraph (a) of this section; and

(2) The submitting entity does not amend the terms or conditions of the product or supplement the request for approval, except as requested by the 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 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 extended period as the submitting registered entity 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 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]

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

(a) Designated contract markets must submit for Commission approval under the procedures of § 40.5, prior to its implementation, any rule or rule amendment that, for a delivery month having open interest, would materially change a term or condition as defined

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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) Changes in lists of approved delivery facilities 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 non-substantive revisions of a product’s terms and conditions that have no effect on the economic characteristics of the product;
- (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 registered entity 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]

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

(a) *Request for approval of rules.* A registered entity may request pursuant to Section 5c(c) of the Act that the Commission approve any proposed rule or rule amendment. 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;