



# Commodity Futures Trading Commission

## Office of Public Affairs

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## Final and Interim Final Rulemaking Regarding Commodity Options

The Commodity Futures Trading Commission (CFTC or Commission) is adopting a final and interim final rule for commodity options. The final rule will generally authorize commodity options to transact subject the same laws and rules applicable to all other swaps. The interim final rule will provide a trade option exemption for certain physically delivered commodity options used by commercial market participants in connection with their commercial activity. The final rule and the interim final rule are authorized by provisions of the Commodity Exchange Act (CEA or Act), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

**On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act. Among other things, the Dodd-Frank Act amended the CEA as follows:**

- Section 721 of the Dodd-Frank Act added a definition of the term “swap” in section 1a(47) of the CEA. The statutory swap definition includes “a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value, of 1 or more . . . commodities . . .”
- In connection with amending the Commission’s options regulations to align with the Dodd-Frank changes to the CEA, a Notice of Proposed Rulemaking, or NPRM, seeking public comment on proposed rules for commodity options, was published on February 3, 2011.

**The final rule will revise Part 32 of the Commission’s regulations to include rules generally permitting the transaction of commodity options subject to all rules and regulations applicable to any other swap.**

- CEA section 4c(b) provides the Commission with plenary rulemaking authority with respect to commodity options. Pursuant to that authority, the Commission’s final rule for commodity options provides a clear authorization pursuant to which commodity options may continue to transact subject to the same rules applicable to any other swap.
- Because exchange-traded options on futures, regulated under part 33 of the Commission’s regulations, are specifically excluded from the swap definition, this rulemaking has no effect on those transactions.
- The final rule will also remove references to exchange-traded options on physicals from part 33 and rely instead on part 32 (although without changing their regulatory treatment).
- The final rule also deletes the obsolete agricultural trade option registration provisions from part 3 of the Commission’s regulations.
- In addition, the final rule also makes technical updates to part 3 and part 33 of the Commission’s regulations in order to align those provisions with the Dodd-Frank Act’s treatment of commodity options.

**The interim final rule provides a trade option exemption for certain physical delivery commodity options, subject to certain conditions.**

- The interim final rule provides a trade option exemption for certain physical delivery commodity options, subject to certain conditions. The interim final rule is being adopted in response to commenters that

requested relief from the full panoply of Dodd-Frank swaps regulations for commodity options used by commercial entities to deliver and/or receive physical commodities in connection with their business.

- The trade option exemption conditions include position limits, large trader reporting, appropriate recordkeeping and reporting requirements, antifraud and anti-manipulation rules, and the retention of certain swap requirements for swap dealers and major swap participants that engage in trade options.
- The Commission is requesting comment on all aspects of the interim final rule, including alternatives thereto. Comments on the interim final rule must be submitted on or before the effective date, as discussed below.

**Effective date – 60 days after publication in the Federal Register; Compliance date – 60 days after further definition of the term “swap” by the CFTC and the SEC.**

- Absent further Commission action, the effective date of both the final rule and the interim final rule for commodity options will be 60 days after the rules are published in the Federal Register.
- Note that, generally, the compliance date for the final rule and the interim final rule shall be 60 days after the term “swap” is further defined pursuant to section 721 of the Dodd-Frank Act (i.e., 60 days after the further definition of the term “swap” is adopted by the Commission and the Securities and Exchange Commission and published in the Federal Register).