



Commodity Futures Trading Commission
Office of Public Affairs
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
www.cftc.gov

Q&A – Adaptation of Regulations to Incorporate Swaps – Records of Transactions

What is the goal of the final rulemaking?

The final rule amends existing recordkeeping requirements for certain entities and individuals under 1.31 and 1.35 of the Commodity Futures Trading Commission's (CFTC) regulations with respect to commodity interest transactions to conform those requirements to the recordkeeping requirements for swap dealers (SDs) and major swap participants (MSPs) under Part 23 of the CFTC's regulations with regard to an SD's or MSP's swap and related cash and forward transactions by establishing a requirement to record all oral communications that lead to the execution of a transaction in a commodity interest, whether communicated by telephone, voicemail, mobile device, or other digital or electronic media.

These conforming amendments are crucial to integrating the CFTC's existing recordkeeping requirements with the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which expanded the scope of the Commodity Exchange Act (CEA) to cover swaps. In this way, the CFTC is affording the other markets subject to its jurisdiction the same market integrity and customer protections that Congress afforded the swaps markets in the Dodd-Frank Act.

Under the final rule, will individuals or entities that purchase grain in the cash market have to record their oral communications?

Generally speaking, no. While the proposed rule would have required that oral communications including telephone calls regarding the purchase of cash commodities be recorded, the Commission, having considered the comments of the agricultural community, among others, decided that the final rule would not require that oral communications leading to the execution of transaction in a cash commodity be recorded.

Who will be required to record their oral communications?

Futures commission merchants (FCMs), retail foreign exchange dealers (RFEDs), introducing brokers (IBs) that have generated more than \$5 million in aggregate gross revenues over the preceding three years, and any designated contract market (DCM) or swap execution facility (SEF) members registered or required to be registered with the CFTC in any capacity (*except for* commodity pool operators, SDs, MSPs, floor traders, and floor brokers who trade for themselves) will have to record their oral communications. As proposed, the rule would have required all members of a DCM or SEF to record oral communications, regardless of their registration status or role in the market. Thus, the final rule will impact a lesser number of market participants than was proposed.

For what types of transactions will they be required to record oral communications?

The requirement extends to oral communications that lead to the execution of a transaction in a commodity interest. A commodity interest generally is a commodity futures contract, a commodity options contract, a retail foreign exchange transaction, or a swap. A commodity interest does not include a cash commodity transaction.

For how long must records of oral communications be kept?

Under final rule 1.31, records of oral communications must be kept for one year.

What is the deadline by which covered entities will have to comply with the requirement to record oral communications?

Covered entities will have until 365 days after publication of the final rule in the Federal Register to comply with the oral communications recordkeeping requirement under 1.35(a).

What does the final rule say about written records?

Under the final rule, FCMs, IBs, RFEDs, and all members of a DCM or SEF must record and keep all written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the execution of a transaction in a commodity interest or related cash or forward transactions, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media. For purposes of the final rule, a related cash or forward transaction means a purchase or sale for immediate or deferred physical shipment or delivery of an asset related to a commodity interest transaction where the commodity interest transaction and the related cash or forward transaction are used to hedge, mitigate the risk of, or offset one another. Thus, the final rule clarifies that the existing requirement under regulation 1.35(a) to keep written records applies to electronic written communications such as emails and instant messages.

Will records have to be tagged by transaction and counterparty?

No. Under the final rule, records will not have to be kept in separate electronic files identifiable by transaction and counterparty. Instead, the final rule will require that such records be kept in a form and manner identifiable and searchable by transaction. Therefore, those required to comply will be allowed to maintain searchable databases of the required records without the added cost and time needed to compile the required records into individual electronic files.