



Commodity Futures Trading Commission

Office of Public Affairs

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Q & A – Part 40 Final Rulemaking

What is the goal of the final rulemaking?

This notice of final rulemaking implements the Dodd-Frank Act's statutory framework for certification and approval of self-regulatory rules and rule amendments submitted to the Commission by registered entities. The final rules also prohibit the listing or clearing of event contracts based upon certain excluded commodities, establish special procedures for certain rule changes proposed by systematically important derivatives clearing organizations, and provide for the tolling of review periods pending the resolution of jurisdictional requests from either the SEC or the CFTC. The final regulations are designed to ensure that new rules and rule amendments comply with the Commodity Exchange Act as amended by the Dodd-Frank Act.

Which registered entities must comply with Part 40 of the Commission's regulations?

The final regulations apply to current registered entities, designated contract markets and derivatives clearing organizations, as well as new registered entities, swap execution facilities and swap data repositories.

What is the new timeline for the Commission's review of rule submissions?

The following timeline will be implemented pursuant to Section 745 of the Dodd-Frank Act:

- Registered entities must submit self-certifications at least ten business days before the effective date of the rule or rule amendment. A new rule or rule amendment will become effective ten business days after the certified rule or rule amendment is received by the Commission, unless the Commission notifies the registered entity that it is staying the certification. To ensure prompt notice to market participants and to increase transparency, the final rule requires registered entities to certify that copies of their rule submissions are posted on their websites at the time of the filing.
- The certification may be stayed for up to 90 days if the Commission determines that the new rule or rule amendment presents novel or complex issues, is certified with an inadequate explanation, or is potentially inconsistent with the Act or Commission regulations.
- Once the Commission issues a notification of stay to the registered entity, the Commission will have up to 90 days to conduct a review of the submission. The Commission must provide a 30-day public comment period, within the 90-day extended review period. Notice of the comment period will be posted on the Commission's website.
- The submitted rule or rule amendment will be deemed certified upon expiration of the 90-day review period unless the Commission objects to the certification.
- The new timeline does not apply to self-certified products.

When will the new timeline for the Commission's review of rule certifications take effect?

The new timeline for the Commission's review of new rule and rule amendments takes effect on July 16, 2011. Section 745 of the Dodd-Frank is self-effectuating and does not require a separate rulemaking.

How will the final rules affect the product certification procedures currently in effect?

The procedures for submitting new products will remain largely unchanged. However, to facilitate and expedite the Commission’s review of new products, the final rule makes two primary amendments:

- First, the final rules require registered entities to supplement product submissions with a “concise explanation and analysis” of the certified product. This explanation and analysis must either be accompanied by the documentation relied upon to establish the basis for compliance with the Act and Commission regulations or incorporate the information contained in such documentation with appropriate citations to data sources.
- Second, to ensure prompt notice to market participants and to increase transparency, the final rules require registered entities to certify that copies of their product submissions are posted on their websites at the time of the filing.

How will the final rules affect the product and rule approval procedures currently in effect?

The procedures for submitting a new product, rule or rule amendment for approval will remain largely unchanged. However, Commission is adopting two primary amendments:

- To ensure prompt notice to market participants and to increase transparency, the final rule requires registered entities to certify that copies of their submissions are posted on their websites at the time of the filing.
- In addition, the Commission is codifying applicable provisions of Section 745 of the Dodd-Frank Act, which established a new standard for the review of new rules or rule amendments. The Commission must approve a new rule or rule amendment unless the rule or rule amendment is inconsistent with the Act or Commission regulations.

Will material changes to terms or conditions of an agricultural contract still require approval by the Commission?

Yes. Section 5c(c) of the Commodity Exchange Act requires rules involving material changes to terms or conditions of an agricultural contract to be approved by the Commission. This requirement remains unchanged.

What are the special certification procedures for systemically important derivatives clearing organizations?

The final rules will require systemically important derivatives clearing organizations (“SIDCOs”) to provide 60-day advance notice of any proposed changes to rules, procedures or operations that could “materially affect the nature or level of risks” presented by the SIDCO.

- The notice must describe the following: (1) the nature of the rule change, (2) the expected effects on risks to the SIDCO, its clearing members, and the market, and (3) how the SIDCO plans to manage expected risks.
- The Commission may object to a proposed rule or rule amendment at any time within the 60-day notice and review period if the submission is not consistent with the Act or Commission regulations.
- If a SIDCO determines that a proposed rule is not material and therefore does not file an advance notice—but the Commission determines that the change is material—the Commission may require the SIDCO to withdraw the proposed change and to resubmit the rule with 60-day advance notice to the Commission.
- The Commission may extend the review period for an additional 60 days if the proposed change raises novel or complex issues.

Which proposed changes to rules, procedures, or operations “materially affect the nature or level of risks” presented by the SIDCO?

The Commission will determine whether a particular change to a rule, procedure, or operation is “material” on a case-by-case basis. Generally, any rule change that the SIDCO expects to substantially affect the performance of clearing or settlement functions or the overall nature or level of risk presented by the SIDCO may be “material.” These rules may affect, for example, financial resources, participant and product eligibility, risk management, settlement or procedures, default procedures, disaster recovery, or governance.

Are all event contracts prohibited under the final regulations?

No. Pursuant to authority in Section 745(b) of the Dodd-Frank Act, the Commission is prohibiting the listing, trading, or clearing of any product that is based on certain excluded commodities and that involves terrorism, assassination, war, gaming, or an activity that is unlawful under any State or Federal law. In addition, the Commission is prohibiting the listing, trading, or clearing of any product involving activities similar to those enumerated above and that the Commission determines, in a future rulemaking, to be contrary to the public interest.

Event contracts that are not prohibited by the final regulations may be submitted under the Commission’s product certification and approval procedures. However, if the Commission determines that a submitted product involves—or may involve—one of the enumerated activities above and thus may be contrary to the public policy, the Commission will request that the registered entity suspend the listing or trading of the contract and will conduct a 90-day review to determine whether the product violates the prohibitions on certain event contract underlyings. Upon completion of its review, the Commission will issue a determination order.

Will the review period for a novel derivative product submission be tolled upon a request for a jurisdictional determination by the SEC or the CFTC?

Yes. Under Section 718(a) of the Dodd-Frank Act, a registered entity certifying or submitting for approval a proposal to list a product having elements of both a security and a contract for the purchase or sale of commodity for future delivery—or an option on such a contract or an option on a commodity (other than a swap)—may provide notice of its proposal both to the Commission and the SEC. However, if a registered entity chooses not to provide such notice and submits a novel product having elements of both a security and a contract noted above, then the Commission will notify the SEC of the submission and accompany such notice with a copy of the registered entity’s complete filing.

If the Commission or the SEC requests a jurisdictional determination from the other, the Commission will toll the applicable product certification or approval review period until the issuance of a final determination order. If the Commission or the SEC seeks judicial review of the jurisdictional determination, the final rule will stay the challenged order, as well as the review period for the product, until the United States Court of Appeals for the District of Columbia Circuit issues a final determination, or until there is resolution of an appeal of that determination. The submission review period will resume only upon a finding that the Commission has jurisdiction over the submission.