# Commodity Futures Trading Commission
## Office of Public Affairs
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# Final Rules Regarding Adaptation of Regulations to Incorporate Swaps – Records of Transactions


The Commodity Futures Trading Commission (Commission) is adopting amendments to its general recordkeeping rules to require certain Commission registrants to record their oral communications that lead to the execution of a transaction in a commodity interest and to require that such records be kept for one year.


## Overview of Adaptation of Regulations to Incorporate Swaps – Records of Transactions

This final rule amends the Commission's existing record keeping requirements under Commission regulation 1.35(a) to provide that futures commission merchants (FCMs), introducing brokers (IBs) with aggregate gross revenues exceeding $5 million over the preceding three years, retail foreign exchange dealers (RFEDs) and certain registrants that are members of designated contract markets (DCMs) or swap execution facilities (SEFs) must record all oral 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, whether communicated by telephone, voicemail, mobile device, or other digital or electronic media. Commission regulation 1.31 is being amended to provide that records of oral communications must be kept for one year. As proposed, the rule was much broader in scope requiring, in addition, that all members of a DCM or SEF record their oral communications that lead to the execution of a cash commodity transaction.

## Oral Communications – Registrants Covered

- FCMs
- IBs that have generated over the preceding three years more than $5 million in aggregate gross revenues
- RFEDs
- Any DCM or SEF member that is registered or required to be registered with the Commission in any capacity *except*:
    - Commodity pool operators
    - Swap dealers (separately covered under Rule 23.202)
    - Major swap participants (separately covered under Rule 23.202)
    - Floor traders
    - Floor brokers when trading for themselves

## Oral Communications – Types of Transactions

- Covered entities and individuals will be required to record oral communications that lead to the execution of a transaction in a commodity interest. A commodity interest generally is defined as a commodity futures contract, a commodity options contract, a retail foreign exchange transaction, or a swap.

## Written Communications – Entities Covered and Modes of Communications

- Entities: FCMs, IBs, RFEDs, and all members of a DCM or SEF
- Modes of Communication: telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media. Thus, the rulemaking clarifies that the existing requirement under Commission regulation 1.35(a) to keep written records applies to electronic written communications such as emails and instant messages.

## Written Communications – Types of Transactions

- Covered entities will be required to record all written communications that lead to the execution of a transaction in a commodity interest or related cash or forward transaction. 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.

## Record Retention Periods

- Records of oral communications must be retained for 1 year
- Records of written communications must be retained for 5 years and be readily available for the first 2 years (per existing Commission regulation 1.31)