

**UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION**

Swap Data Recordkeeping and Reporting Requirements) RIN 3038-AD19

**COMMENTS OF THE
AMERICAN GAS ASSOCIATION**

Pursuant to the Proposed Rulemaking noticed in the Federal Register on December 8, 2010,¹ by the Commodity Futures Trading Commission (“CFTC” or “Commission”), the American Gas Association (“AGA”) respectfully submits these comments. AGA believes that the Commission’s rulemakings to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)² should ensure that the financial markets related to energy commodities function efficiently and protect the ability of commercial hedgers to engage in risk management activities at reasonable cost for the benefit of American energy consumers.

I. COMMUNICATIONS

All pleadings, correspondence and other communications filed in this proceeding should be served on the following:

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II. IDENTITY AND INTERESTS

The AGA, founded in 1918, represents 199 local energy companies that deliver clean natural gas throughout the United States. There are more than 70 million residential, commercial

¹ *Swap Data Recordkeeping and Reporting Requirements*, 75 Fed. Reg. 76,573 (Dec. 8, 2010).

² Pub. L. No. 111-203 (July 21, 2010).

and industrial natural gas customers in the U.S., of which 91 percent — more than 64 million customers — receive their gas from AGA members. AGA is an advocate for local natural gas utility companies and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international gas companies and industry associates. Today, natural gas meets almost one-fourth of the United States' energy needs.³ AGA's members engage in financial risk management transactions in markets regulated by the Commission. As such, AGA's members will be directly affected by the Commission's regulations promulgated under the Dodd-Frank Act.⁴

III. COMMENTS

AGA member companies provide natural gas service to retail customers under rates, terms and conditions that are regulated at the local level by a state commission or other regulatory authority with jurisdiction. Many gas utilities use a variety of financial tools, such as futures contracts traded on CFTC-regulated exchanges and over-the-counter energy derivatives, to hedge the commercial risks associated with providing natural gas service, particularly volatility in natural gas commodity costs.

The Dodd-Frank Act required the Commission to adopt rules regarding reporting and recordkeeping for swap transactions.⁵ The proposed rules in this proceeding seek to implement the swap data recordkeeping and reporting requirements and to define the obligations of various entities including counterparties that are neither swap dealers nor major swap participants.

Among other things, the proposed rules would require non-swap-dealer and non-major-swap-

³ For more information, please visit www.aga.org.

⁴ The interests of AGA members may be greatly affected by the Commission's ultimate resolution of the definitions of "swap dealer" and "major swap participant." AGA may file additional comments in this and other proceedings after the definitions of those terms are finalized.

⁵ Dodd-Frank Act §§ 727-29.

participant counterparties to keep full and complete records with respect to each of their swap transactions, and to keep them through the life of the transaction and for a period of at least five years from the final termination of the transaction.⁶ The proposed rules would also require such counterparties to ensure that the records are retrievable within three business days throughout the period during which the records are required to be kept.⁷

Moreover, the proposed rules would require non-swap-dealer and non-major-swap-participant counterparties to report swap creation and swap continuation information. In particular, the proposed rules would require such parties that are designated as reporting counterparties to report certain information about newly-created or revised swaps to a swap data repository within as little as 15 minutes for electronic transactions and 24 hours for manually executed and verified transactions.⁸ The proposed rules would also require such reporting counterparties to report swap continuation data on a daily basis and all valuation data in the reporting counterparty's possession at intervals to be determined by the Commission prior to adoption of final swap data reporting requirements.⁹

Further, the proposed rules include provisions to determine which counterparty must fulfill the reporting obligations.¹⁰ In particular, the proposal rules provide that if both counterparties are non-swap dealers and non-major swap participants, then the counterparties shall agree as one term of their swap transaction which counterparty shall fulfill the reporting obligations with respect to that swap transaction.¹¹

⁶ Proposed 17 C.F.R. § 45.2(b) and (c).

⁷ Proposed 17 C.F.R. § 45.2(d)(3).

⁸ Proposed 17 C.F.R. § 45.3(a)(2).

⁹ Proposed 17 C.F.R. § 45.3(b)(2)(ii).

¹⁰ Proposed 17 C.F.R. § 45.5.

¹¹ Proposed 17 C.F.R. § 45.5(c).

AGA supports market transparency efforts that increase the efficiency and transparency of the financial markets to the benefit of consumers. Gas utilities and other end-users may be required to report swap transactions that do not involve a swap dealer or a major swap participant as a counterparty, and will be required to retain records regarding all swap transactions. AGA thus urges the Commission to establish reporting and recordkeeping obligations that minimize the administrative burdens on gas utilities and other end-users to help reduce the cost of hedging and risk management on behalf of consumers. To that end, AGA offers the following recommendations regarding the recordkeeping and reporting obligations of counterparties that are not swap dealers or major swap participants.

The proposed rules would require all non-swap-dealer and non-major-swap-participant counterparties to keep full and complete records, “together with all pertinent data and memoranda,” with respect to each of their swap transactions, including all swap creation and swap continuation data required to be reported under the regulations and any records supporting an end-user exception to the mandatory clearing requirement.¹² Counterparties need clear rules delineating their recordkeeping obligations in order to build effective compliance programs. AGA, therefore, requests that the Commission provide additional detail as to the specific information that would need to be retained by individual market participants in compliance with the proposed rules. In particular, the Commission should clearly spell out, and include examples of, the information that would fall into the category of “pertinent data and memoranda” under proposed § 45.2(b).

The proposed rules would require end-users to retain records regarding all of their swap transactions through the life of the transaction and for five years thereafter and to ensure that the

¹² See Proposed § 45.2(b).

records are available throughout that period (*i.e.*, if the records are archived, they must be retrievable within three business days). AGA believes that in practice, a requirement that the records be available within three business days effectively precludes off-site storage of business records. An option to require an off-site storage provider to retrieve records within three business days would be cost-prohibitive, if available at all. As a result, end-users would be required to maintain on-site all of the business records necessary to comply with the proposed swap data recordkeeping requirements.

AGA contends that requiring such records to be kept through the life of a transaction and for five years thereafter would impose substantial costs on end-users such as gas utilities. AGA, therefore, recommends that the Commission reduce the recordkeeping requirements applicable to counterparties that are not swap dealers or major swap participants to require that the relevant business records be kept throughout the life of the transaction and for only *three* years thereafter. Given that end-user to end-user swaps transactions may only represent a relatively small portion of the transactions, a more limited recordkeeping requirement would not impair the Commission's market oversight capability.

Although AGA believes that gas utilities should not, and generally would not, be classified as swap dealers or major swap participants, gas utilities could be responsible for reporting certain swap transactions such as end-user to end-user swap transactions. Some gas utilities do not have the automated systems in place to satisfy the reporting obligations within some of the timeframes anticipated by the Commission. AGA recognizes and appreciates the Commission's efforts to accommodate entities that have less sophisticated systems, but believes that several revisions should be made to the proposed rules to ensure that entities that would

manually report information about their swap transactions can fulfill the Commission's requirements.

The proposed swap creation reporting rules contemplate that, where the reporting party is neither a swap dealer nor a major swap participant, swap creation data must be reported within 15 minutes of execution if the transaction is electronically executed and verified, within 30 minutes if execution does not occur electronically and verification occurs electronically, and within 24 hours if both execution and verification do not occur electronically.¹³ The Commission has not yet decided what time period will be allowed for the reporting of confirmation data. AGA believes that for most transactions conducted by gas utilities, there is no verification process separate from transaction execution and confirmation. For that reason, the timelines for reporting swap execution and confirmation data are not clear. AGA, therefore, requests that the Commission revise the proposed rules in this proceeding to provide that where a reporting entity is neither a swap dealer nor a major swap participant, the reporting party will be provided at least 24 hours to fulfill their reporting obligation.

Similarly, the proposed rules provide that where a transaction is executed on a Swap Execution Facility ("SEF") or confirmed on a Derivatives Clearing Organization ("DCO"), the SEF or DCO will report the execution or confirmation data, however, a non-swap-dealer or non-major-swap-participant reporting counterparty would still be obligated to report within the specified timeframes any primary economic terms data not reported by the SEF or DCO.¹⁴ AGA requests that the Commission revise the proposed rules in this proceeding to provide that reporting counterparties that are neither swap dealers nor major swap participants will be provided at least 24 hours to report any data not reported by an SEF or DCO.

¹³ See Proposed 17 C.F.R. § 45.3(a)(2).

¹⁴ See Proposed 17 C.F.R. § 45.3(a)(2)(i)(C), (ii)(B), (iii)(A) and (iv)(A).

In addition, AGA urges the Commission to revise its proposed requirement that swap transactions that are not electronically executed or verified be reported within 24 hours. A 24-hour timeframe does not coincide with the regular business hours for the trading and risk management operations of many gas utilities. For example, a transaction executed or confirmed late on a Friday afternoon would need to be reported either on that day or on the following Saturday. Additional costs would need to be incurred to facilitate reporting outside of regular business hours. AGA requests that the Commission permit entities that are neither swap dealers nor major swap participants to report swap transaction information by the close of the following business day.

The proposed rules would also require reporting counterparties that are neither swap dealers nor major swap participants to report swap continuation data on a daily basis and all valuation data in the reporting counterparty's possession at intervals to be set by the Commission. AGA contends that a requirement to report continuation and valuation information on a daily basis would be unduly burdensome for such counterparties. In order to reduce the administrative burden associated with having to reporting continuation and valuation information regarding end-user to end-user swap transactions, the Commission should required such reporting no more frequently than on a monthly basis.

Although some gas utilities perform daily valuations of their positions, such valuations are intended to be used for internal purposes, such as approximating exposure to a particular counterparty, and may not provide useful information on a transaction-by-transaction basis.¹⁵ Some gas utilities perform the mark-to-market calculations on a monthly basis due to the

¹⁵ The NOPR also indicates that the Commission may be interested in receiving information about collateral posted for each transaction. Typically, for uncleared transactions, required collateral is calculated on a counterparty-by-counterparty basis, and is not established for each transaction.

constraints of their processing systems and procedures. Gas utilities perform numerous accounting and billing functions on a monthly basis into which the reporting of continuation and valuation data for swap transactions could be integrated. Moreover, as noted above given that end-user to end-user swaps transactions may only represent a relatively small portion of the transactions, a more limited reporting requirement is not expected to impair the Commission's market oversight capability.

Finally, with regard to the determination of which counterparty must fulfill the reporting obligations, AGA contends that the Commission should establish a default designation of the reporting counterparty in the event the counterparties cannot agree. Where neither counterparty is a swap dealer or major swap participant, the entity designated as the "Calculation Agent" under the applicable ISDA agreement should be the reporting counterparty unless the parties agree otherwise. The counterparties would continue to be free to negotiate the designation of the reporting counterparty; however, the regulations would provide the necessary certainty in the absence of an agreement. Moreover, a regulatory designation of a default reporting party may better provide parties with a basis for negotiation of the reporting obligations. In addition, AGA believes that only one counterparty should be required to report swap data information and such counterparty should be designated as the reporting counterparty.

IV. CONCLUSION

Wherefore, for the reasons stated above, the American Gas Association respectfully requests that the Commission consider these comments in this proceeding.

Respectfully submitted,

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