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Melissa Jurgens  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Center  
1155 21<sup>st</sup> Street NW  
Washington, DC 20581

RE: Review of Swap Data Recordkeeping and Reporting Requirements, RIN 3038-AE12

Dear Secretary Jurgens,

**I. INTRODUCTION.**

The American Petroleum Institute (“**API**”), on behalf of its members, submits the comments provided herein in response to the Commodity Futures Trading Commission (the “**Commission**” or “**CFTC**”)’s request for comment regarding its review of the swap data reporting requirements.<sup>1</sup> API supports the goals of the Dodd-Frank Act<sup>2</sup> to bring transparency and price discovery to the swaps markets and the Commission’s efforts to implement swap data reporting regulations to facilitate these goals.

API is a national trade association representing more than 580 oil and natural gas companies. API’s members range from the largest major oil company to the smallest of independents. They are producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry. The core business of API members is delivering affordable energy to their wholesale and retail consumers. API’s members transact in physical and financial, exchange-traded and over-the-counter markets primarily to hedge or mitigate commercial risks associated with their core business.

API members rely on the integrity and efficient operation of the commodity derivatives markets regulated by the Commission. To preserve the integrity of such markets, API believes that the Commission’s swap data reporting regulations must be tailored to achieve the goals of the Dodd-Frank Act without unnecessarily burdening market participants and their ability to effectively operate their underlying commercial businesses. To this end, API urges the Commission to consider the comments presented herein as well as the comments received by other market participants in this proceeding and

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<sup>1</sup> *Review of Swap Data Recordkeeping and Reporting Requirements*, Request for Comment, 79 Fed. Reg. 16,689 (Mar. 26, 2014) (“**Request for Comment**”).

<sup>2</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

issue new proposed rules appropriately modifying the existing Part 45 rules to address commenters' concerns. Any new proposed rules also should be subject to public notice and comment.

API appreciates the opportunity to submit these comments and presents two overarching themes for the Commission's consideration as it reviews and modifies the Part 45 rules.

## **II. DISCUSSION.**

### **A. THE COMMISSION MUST FIX IDENTIFIED TECHNICAL AND OPERATIONAL ISSUES POSED BY ITS EXISTING PART 45 REGULATIONS BEFORE CONSIDERING THE ADOPTION OF NEW REPORTING OBLIGATIONS.**

The existing regulatory framework for reporting swap data under Part 45 of the CFTC's Regulations has required both swap dealers ("**SDs**") and non-SDs ("**End-Users**") to incur tremendous costs and deploy significant resources. To comply with the Part 45 reporting requirements, End-Users and other market participants that function as reporting counterparties have implemented new or modified existing information technology ("**IT**") systems to capture trade data, as well as adopted new internal business processes and practices for transacting swaps. The Commission has attempted to alleviate some of the burdens imposed by Part 45 through the issuance of various no-action relief letters and the formation of an interdivisional staff working group. Notwithstanding these efforts, API members and other market participants are experiencing many technical and operational challenges associated with the Part 45 swaps data reporting requirements.<sup>3</sup>

These technical and operational difficulties faced by reporting counterparties are further exacerbated by a lack of uniformity and standardization of the protocols and methodologies adopted by the swap data repositories ("**SDRs**"). As a consequence, the compliance burden and costs incurred by market participants who report to multiple SDRs has markedly increased.

The Commission's specific questions in its Request for Comment indicate that it might be considering expanding the breadth of its reporting regulations. Before taking any such action, API strongly urges the Commission to correct the technical and operational issues faced by End-Users and other market participants under the current Part 45 swap data reporting regime. As part of this process, API also recommends that the Commission consider the adoption of uniform and standardized SDR reporting protocols, systems, and methodologies, so that market participants are able to implement a single trade capture system and a single set of business practices or processes for collecting and reporting swap data to all Commission-approved SDRs. API submits that input from a technical working group comprised of SDs, End-Users, and representatives of the SDRs might help the CFTC establish uniform protocols and methodologies that are the most efficient and least burdensome on market participants.

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<sup>3</sup> Although API's comments herein do not address the specific technical and operational issues faced by market participants, API directs the Commission's attention to the comments of The Commercial Energy Working Group ("**CEWG**") filed in this proceeding, which set forth examples of these issues and discuss them at length.

**B. THE SWAPS DATA COLLECTED FROM MARKET PARTICIPANTS SHOULD BE LIMITED TO THAT SPECIFICALLY NEEDED BY THE COMMISSION TO FULFILL ITS SWAP MARKET OVERSIGHT RESPONSIBILITIES.**

The swap data reporting requirements set forth in Part 45 are intended, in large part, to bring transparency to the swaps markets and enhance the Commission's ability to execute its swap market oversight responsibilities. As currently implemented, the requirements applicable to a reporting counterparty require the submission of information that is not needed by the Commission to fulfill its market oversight responsibilities. Specifically, under Part 45, a reporting counterparty must submit to an SDR multiple streams of data, including (i) primary economic terms ("**PET**"), (ii) confirmation, and (iii) continuation data, such as the daily mark of a swap. It is API's understanding that several data points currently submitted by reporting counterparties simply are not relevant to the Commission's market oversight responsibilities, and the Commission is unable to utilize in any meaningful way the swap data currently being reported to SDRs.<sup>4</sup>

For example, many PET terms, which contemplate the use of financially-settling swaps, are unworkable for certain transactions, such as physically-settling commodity options ("**Trade Options**"). When Trade Options are executed, price and quantity terms often are unknown until the option itself is exercised. Additionally, given Trade Options, like other physical deals, are bespoke in nature and often result in lengthy negotiations, execution timestamps are difficult to capture and are largely meaningless for these transactions.

API also submits that the regulatory benefit in obtaining valuation data on uncleared swaps is limited given market participants report daily marks based on their own methodologies for valuing a swap. That is, the Commission's ability to formulate a clear picture of market risk based on the valuation data submitted is severely constrained as the Commission cannot make real comparisons among the various daily marks submitted. Further, valuation data can be submitted by End-Users up to thirty days after the swap has been valued, which might cause the data to be out-of-date by the time the daily mark is submitted.

Accordingly, API recommends that the Commission reconsider the scope of swaps data that is actually needed for its swap market oversight role and streamline Part 45 to require market participants to report only the data needed to fulfill these responsibilities. Requiring market participants to report an overly broad and unnecessary set of swap data can have the unintended consequences of (i) diminishing the value of swaps data reported to SDRs, (ii) compromising the policy goal of enhanced transparency in swap markets, (iii) placing unnecessary burdens on market participants and increasing their compliance costs, and (iv) constraining the Commission's resources and personnel needed to effectively oversee the swaps markets.

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<sup>4</sup> See CFTC Press Release, *CFTC to Form an Interdivisional Working Group to Review Regulatory Reporting* (Jan. 21, 2014); see also *CFTC Seeks Comment on Improving Swaps Data Stream*, The Wall Street Journal (Mar. 19, 2014).

**III. CONCLUSION.**

API supports efforts to ensure swap data reporting is effective, efficient, and provides the Commission with the information necessary to perform its market oversight responsibilities.

API appreciates the opportunity to provide these comments and requests the Commission to consider them as it evaluates the regulatory framework adopted under Part 45. The recommendations provided herein will facilitate the implementation of a more workable regulatory framework for swap data reporting that lessens the technical and operational burdens imposed on market participants without impairing the Commission's ability to effectively oversee the swaps markets.

Should you have any questions or concerns regarding these comments, please direct them to Stephen Comstock at (202) 682-8455 or [comstocks@api.org](mailto:comstocks@api.org).

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Comstock', with a horizontal line extending to the right.

Stephen Comstock

Director of Tax and Accounting Policy,  
American Petroleum Institute