



United States Government Accountability Office
Washington, DC 20548

B-322945

January 23, 2012

The Honorable Debbie Stabenow
Chairman
The Honorable Pat Roberts
Ranking Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

The Honorable Frank D. Lucas
Chairman
The Honorable Collin C. Peterson
Ranking Member
Committee on Agriculture
House of Representatives

Subject: *Commodity Futures Trading Commission: Real-Time Public Reporting of Swap Transaction Data*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Commodity Futures Trading Commission (Commission), entitled “Real-Time Public Reporting of Swap Transaction Data” (RIN: 3038-AD08). We received the rule on January 9, 2012. It was published in the *Federal Register* as a final rule on January 9, 2012, with an effective date of March 9, 2012. 77 Fed. Reg. 1182.

The final rule implements certain statutory provisions enacted by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Specifically, in accordance with the Dodd-Frank Act, the Commission is adopting rules to implement a framework for the real-time public reporting of swap transaction and pricing data for all swap transactions.

Enclosed is our assessment of the Commission’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the Commission complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: David A. Stawick
Secretary, Commodity Futures
Trading Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
COMMODITY FUTURES TRADING COMMISSION
ENTITLED
"REAL-TIME PUBLIC REPORTING OF SWAP TRANSACTION DATA"
(RIN: 3038-AD08)

(i) Cost-benefit analysis

The Commodities Exchange Act (CEA) section 15(a) requires the Commission to consider the costs and benefits of its actions in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Additionally, the Commission states to the extent that these new rules reflect the statutory requirements of the Dodd-Frank Act, they will not create costs and benefits beyond those mandated by Congress in passing the legislation. However, the Commission notes that the rules may generate costs and benefits attributable to the Commission's determinations regarding implementation of the Dodd-Frank Act's statutory requirements. Moreover, according to the Commission, as this rulemaking is a reporting rule, many of the costs of the rulemaking are associated with collections of information. The Commission notes that it is obligated to estimate the burden of and provide supporting statements for any collections of information it seeks to establish under considerations contained in the Paperwork Reduction Act (PRA), 44 § U.S.C. 3501 *et seq.*, and to seek approval of those requirements from the Office of Management and Budget (OMB). Therefore, the Commission believes that the estimated burden and support for the collections of information in this rulemaking, as well as the consideration of comments thereto, are discussed in the PRA section of the rulemaking and the information collection requests filed with OMB as required by that statute. Otherwise, the Commission states that the costs and benefits of the Commission's determinations are considered in light of the five factors set forth in CEA section 15(a).

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

The Commission provided in its RFA statement that the proposed rule would have a direct effect on numerous entities, specifically designated contract markets, swap data repository (SDRs), swap execution facilities (SEFs), swap dealers (SDs), major swap participants (MSPs), and certain single end-users. In the Proposing Release, the Commission then provided that it previously had established that certain entities subject to its jurisdiction are not small entities for purposes of the RFA. The

Commission also provided that certain entities that would be subject to the proposed rule—namely SDRs, SEFs, SDs, and MSPs—are entities for which the Commission had not previously made a size determination for RFA purposes. The Commission proposed that these entities should not be considered to be small entities based upon their size and other characteristics. The Commission recognized that the proposed rule could have an economic effect on certain single end users, in particular those end users that enter into swap transactions with another end-user. According to the Commission, unlike the other parties to which the proposed rulemaking would apply, these end users are not subject to designation or registration with or to comprehensive regulation by the Commission. The Commission recognized that some of these end users may be small entities. Accordingly, for the reasons stated in the proposal and foregoing discussion in response to the comments received from the association, the Commission continues to believe that the rulemaking will not have a significant impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. § 605(b), that the real-time reporting requirements being adopted herein will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the Commission is not subject to title II of the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule was issued using the notice and comment procedures found at 5 U.S.C. § 553. On December 7, 2010, the Commission published a notice of proposed rulemaking entitled, “Real-Time Public Reporting of Swap Transaction Data.” 75 Fed. Reg. 76,140. The Commission received comments from 88 interested parties representing a cross-section of the global financial services industry, including trade associations for both financial and non-financial end-users, potential SDs and MSPs; law firms representing diverse interests; exchanges; and numerous service and technology providers which the Commission addressed in its discussion of the final rules.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The Commission states that the PRA imposes certain requirements on federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. According to the Commission, this final rulemaking contains information collection requirements. The title for the collection

of information under part 43 is “Real-Time Public Reporting of Swap Transaction Data.” The Commission notes that OMB issued a notice of action providing that the Commission should examine the comments received and submit a revised supporting statement. According to the Commission, OMB has assigned OMB control number 3038–0070 to this collection of information, but OMB is withholding its approval of this collection of information pending the submission of the revised supporting statement. The Commission has revised some of its assumptions and estimates as a result of changes in the requirements imposed by part 43 and after considering the comments received from two interested parties who were invited to comment on any aspect of the information collection requirements discussed in the Proposing Release. The Commission states that its revised estimates are being submitted to OMB and can be found in the updated form 83–I and supporting statement, which can be found at <http://www.reginfo.gov/public/do/PRAMain>.

Statutory authorization for the rule

The Commission states that the final rules are authorized by 7 U.S.C. §§ 2(a), 12a(5), and 24a, as amended by Title VII of the Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, 124 Stat. 1376 (2010).

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, the Commission is not subject to the review requirements of the order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, the Commission is not subject to the review requirements of the order.