



# Commodity Futures Trading Commission

## Office of Public Affairs

Three Lafayette Centre

1155 21st Street, NW

Washington, DC 20581

[www.cftc.gov](http://www.cftc.gov)

## Q & A – Interim Final Rule Regarding Reporting of Certain Post-Enactment Swap Transactions

### What is the goal of the proposed rulemaking?

This interim final rule clarifies the reporting obligations of market participants with respect to swaps entered into on or after the date of enactment of the Dodd-Frank Act and prior to the effective date of swap data reporting rules implementing Section 2(h)(5)(B) of the Commodity Exchange Act, as amended (“transition swaps”). The rule does not impose a present reporting requirement, but rather is intended to advise potential counterparties that (1) reporting requirements applicable to transition swaps will be adopted by the Commission in a separate rulemaking pursuant to Section 2(h)(5)(B) of the Act; and (2) implicit in a reporting requirement is the obligation to preserve certain data pending implementation of the provisions of Section 2(h)(5)(B). The rule is codified in CFTC Regulation 44.03.

### What is an interim final rule? Who must comply with the interim final rule?

An interim final rule permits an agency to adopt as final, for good cause shown, a rule that has not been subject to the Administrative Procedure Act’s mandated public notice and opportunity to comment. In an interim final rulemaking, the agency publishes the rule as final and concurrently solicits public comment (See 5 U.S.C. § 553(b)(3)(B)). An interim final rule is warranted in these circumstances by the necessity to provide timely notice to counterparties that they may become subject to a reporting requirement pursuant to Section 2(h)(5)(B) of the CEA and to advise with respect to the data that should be preserved with respect to such reporting. A delay in so advising affected persons likely will result in the loss of valuable data.

This interim final rule applies to all counterparties to transition swaps.

### What obligations are imposed by the interim final rule?

Although it has not yet proposed permanent rules implementing Section 2(h)(5)(B), the Commission believes that the reporting obligations imposed by that statutory provision became effective upon enactment of the Dodd-Frank Act. Accordingly, counterparties who are or may become subject to those obligations should be prepared to report swap data relating to transition swaps at such time as reporting is required under a permanent rule. While Section 2(h)(5) does not expressly require that counterparties retain data related to transition swaps, implicit in the reporting requirement established by this provision is the obligation to preserve data related to the terms of each transition swap so that it may be reported when permanent reporting rules implementing Section 2(h)(5)(B) are adopted by the Commission.

The Commission is mindful that the data retention obligation may be perceived as burdensome, and in that regard the Note to Regulation 44.03 attempts to limit the data to material information that may be expected to assist the Commission in performing its oversight functions under the CEA. To ensure that important information relating to the terms of transition swaps may be preserved with minimal burden on counterparties, the Note specifically does not require any counterparty to a transition swap to create new records and permits records to be retained in their existing format. Similarly, the Note specifies that information not in the counterparty’s possession prior to the effective date of the interim final rule need not be reported.