

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

Clearing Exemptions for Certain Swaps Entered into by Cooperatives

OMB CONTROL NUMBER 3038-0102

Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The final cooperative exemption rule allows for certain cooperatives to elect not to clear certain swaps subject to the clearing requirement. The information that will be collected is necessary due to Section 2(h)(7) of the Commodity Exchange Act as implemented by the reporting requirements Regulation 50.50(b).

2. Indicate how, by whom, and for what purpose the data would be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The information collected will be analyzed by Commission staff to determine whether a cooperative claiming the exemption is doing so appropriately.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The required information is required to be filed electronically.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The required information is not already collected by the Commission for any other purpose, nor is it collected by any other agency, nor is the information available for public disclosure through any other source.

5. If the collection of information involves small business or other small entities (Item 5 of OMB From 83-1), describe the methods used to minimize burden.

The required information does not involve any small businesses or other small entities.

6. Describe the consequence to the Federal Program or policy activities if the collection were conducted less frequently as well as any technical or legal obstacles to reducing burden.

Less frequent collection of information may lead to an inability for the Commission to adequately monitor whether or not appropriate entities are selecting the exempt cooperative status and whether or not the swaps for which the exemption is being elected meet the requirements in the rule. The rule is flexible as to reporting. First, it is within the discretion of the entity to select the exempt cooperative status and second, once selected, the entity may choose whether to report the information required (other than that the exemption is being elected for a particular swap) on a swap-by-swap or annual basis.

7. Explain any special circumstances that require the collection to be conducted in a manner:

- requiring respondents to report information to the agency more often than quarterly;

The regulations require reporting of the election of the clearing exemption for each swap for which the exemption is elected. For all other information, the regulations allow, but do not require, an exempt cooperative to report on a swap-by-swap, rather than an annual, basis.

- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

This regulation does not impose a deadline.

- requiring respondents to submit more than an original and two copies of any document;

Exempt cooperatives are required to submit only single copies of documents.

- requiring respondents to retain records other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

None.

- in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

No statistical surveys are involved.

- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

The requirements do not involve use of any statistical data classification.

- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

The requirements do not involve a pledge of confidentiality regarding the collection of data that is not supported by statutory authority.

- requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

The agency has procedures to protect the confidentiality of a respondent's information set forth in 17 CFR Part 145.

For enforcement purposes, Commission Regulation 1.31 requires that:

“All books and records required to be kept by the (Commodity Exchange) Act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the 5-year period. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice.”

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice required by 5 C.F.R. 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

The Commission received two comments on cost and hour burdens. The ABA questioned whether the Commission had underestimated its estimations of the number of cooperatives eligible for the exemption, and the number of swaps each eligible cooperative engages in per year. The ICBA commented on the static nature of the Commission's approach in estimating each exempt cooperative engages in 50 swaps per year. The Commission noted that commenters provided the Commission with no additional data on this issue after the Commission had solicited such information in the noticed of proposed rulemaking. Further, the Commission pointed out that staff reached out to cooperatives and their regulators to calculate its estimation. Finally, the Commission acknowledged that the number of swaps may change each year, but these changes might depend on information that the Commission does not have available to evaluate, such as subsequent changes to laws that might affect cooperatives and the extent to which they may use swaps, increases or decreases in the total amount of borrowing undertaken by the members of those cooperatives, and the frequency with

which exempt cooperatives make the types of loans or experience other business changes that might increase or decrease the use of swaps.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping disclosure, or reporting format (if any, and on the data elements to be recorded, disclosed, or reported.

Commission staff has held meetings with persons outside the agency to discuss the exemption of certain cooperatives generally, but there has been no discussion of the proposed requirements specifically. The Commission has held discussions with persons outside the agency regarding the same reporting requirements for another rule and modified the reporting requirements for both rules in response to such comments.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years—even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

No such circumstances are anticipated.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

This question does not apply.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulations, or agency policy.

The Commission provides no assurance of confidentiality above that provided by the agency's Freedom of Information Act regulations, 17 CFR Part 145.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

This question does not apply. None of the required information is sensitive, as that term is used in Question 11.

12. Provide estimates of the hour burden of the collection of information. The Statement should:

- Indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than ten) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
- If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.
- Provide estimates of annualized cost to respondents for the hours burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.

See Attachment A.

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- The cost estimate should be split into two components; (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major costs factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software, monitoring, sampling, drilling and testing equipment, and record storage facilities.
- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate, agencies may consult with a sample of respondents (fewer than ten), utilize the 60-day pre-OMB submission public comment process and use existing

economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

See Attachment A.

14. Provide estimates of the annualized costs to the Federal Government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

No increased costs to the government are anticipated as a result of this new collection of information above those estimated costs outlined in the OMB Supporting Statement submitted in connection with the “Swap Data Repositories” Notice of Proposed Rulemaking, published in the Federal Register on December 23, 2010.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

This question does not apply.

16. For collection of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

This question does not apply.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

This question does not apply.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

This question does not apply.

Attachment A

Reporting Costs for the Estimated Ten Exempt Cooperatives

Reporting	Aggregate Hours per Annum	Cost Range	Notes
(1) Swap-by-Swap Reporting to SDR or Commission (§ 50.50(b))	1.5 - 17	\$300 to \$3,500 (\$208/hour)	This assumes that all exempt cooperatives will be reporting counterparties.
(2) Electing Counterparty Annual Reporting (§ 50.50(b)(2))	5 – 15	\$2,000 - \$5,900 (\$390/hour)	This assumes that all exempt cooperatives will be reporting counterparties and will elect annual reporting for § 39.6(b)(1)(iii) information.
(3) Updating Reporting Procedures (§ 50.51(c))	10 - 100	\$3,400-\$34,100 (\$341/hour)	This assumes that all exempt cooperatives will have to update reporting procedures. This is a one-time cost in the first year.
(4) Non-Reporting Counterparties (§ 50.51(c))	1.0 – 100	\$400 - \$39,000 (\$390/hour)	This estimate assumes all exempt cooperatives are non-reporting counterparties for some swaps and each spends between five minutes to ten hours each year on this task.
Estimated Reporting Total	18 – 232 (125 midpoint)	\$6,100 - \$82,500 (\$44,300 midpoint)	Sum of rows (1) through (4).