

## **SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS**

Exclusion of Utility Operations-Related Swaps with Utility Special Entities from *De Minimis*  
Threshold for Swaps with Special Entities.

**OMB CONTROL NUMBER 3038 -0090**

### **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 Commodity Futures Trading Commission (Commission) is amending its Regulation 1.3(ggg) to permit a person to exclude “utility operations-related swaps” with “utility special entities” in calculating the aggregate gross notional amount of the person’s swap positions solely for purposes of the *de minimis* exception applicable to swaps with special entities. Currently, during any twelve-month period, a person can engage in swaps with “special entities” as that term is defined in Section 4s(h)(2)(C) of the Commodity Exchange Act (CEA) and Commission Regulation 23.401(c) up to an aggregate gross notional amount of \$25 million without being required to register as a swap dealer. In response to requests from persons in the natural gas and electric utility business, the Commission proposed to permit a person to exclude “utility operations-related swaps” (as defined in the amended regulation) in calculating the aggregate gross notional amount of the person’s swap positions with special entities that own or operate electric or natural gas production or transmission facilities (utility special entities). Instead, such swaps would be subject to the general *de minimis* threshold, which is currently set at \$8 billion.

New Regulation 1.3(ggg)(4)(i)(B) requires a person claiming the exclusion to maintain in accordance with Regulation 1.31 any written representations that the person receives from utility special entities (representing that the utility special entity and the utility operations related swap(s) to which it is a counterparty meet the criteria set forth in the regulation) which representation the person relies on to substantiate its eligibility to claim the exclusion. The written representation will enable the Commission to quickly and efficiently confirm that persons relying on the exclusion are (or are not) eligible to rely on the exclusion. Such written representation should be sufficient for the Commission’s compliance purposes. The Commission believes that such representations (and any other recordkeeping required as a consequence of claiming the exclusion) will likely be added to the swap documentation that the person is already required to maintain under existing regulations (e.g., Regulation 45.2(b)) or that they maintain in the normal course of their business. Thus, new Regulation 1.3(ggg)(4)(i)(B)(5) instructs each person claiming the proposed exclusion to keep records in accordance with the current recordkeeping requirements of Regulation 1.31, which will help in substantiating ongoing compliance with the exclusion provided in Regulation 1.3(ggg)(4)(i)(B). Thus, the Commission is amending collection 3038-0090 to reflect an increase in the burden of respondents resulting

from Regulation 1.3(ggg)(4)(i)(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 would be used by the person claiming the exclusion to substantiate the person's eligibility to do so. Also, the Commission will use the information when a question arises as to the person's eligibility for the exclusion.

- 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.**

Commission regulations permit persons subject to recordkeeping requirements to keep their records 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, collected by any other agency, or 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 Chairman has certified on behalf of the Commission that the proposal (including the collection of information) will not have a significant economic impact on a substantial number of 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.**

Failure to maintain records substantiating a person's eligibility to claim the *de minimis* exception will adversely affect the Commission's ability to ensure compliance with the swap dealer registration requirements.

- 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;**

This question does not apply.

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

This question does not apply.

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

This question does not apply.

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

This question does not apply.

- **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;**

This question does not apply.

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

This question does not apply.

- **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**

This question does not apply.

- **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.**

This question does not apply.

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 CFR 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.**

**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).**

In the proposing Federal Register release, the Commission sought public comment on any aspect of the proposed collection of information. Commenters addressed the proposed requirement generally to maintain books and records to substantiate the person's eligibility to claim the exclusion in Regulation 1.3(ggg)(4)(i)(B) as proposed. They pointed out that persons engaged in swaps are already subject to substantial recordkeeping requirements under existing regulations. Certain commenters believed that the Commission had underestimated the number of potential recordkeepers by a factor of 20. After considering the comments, the Commission determined to adopt the rule amendment without the proposed general recordkeeping requirement, requiring only that a person claiming the exclusion keep any written representations that the person obtains from utility special entities and upon which the person relies in determining that the person is eligible to claim the exclusion, in accordance with Regulation 1.31. The removal of a general recordkeeping requirement constitutes a reduction in the burden per recordkeeper. In addition, in response to a comment received on the Commission's PRA estimates, the Commission has revised its estimate of the number of respondents from 100 to 2,000. The Commission has revised its burden and cost estimates accordingly. The recalculation takes into account a reduction in the estimate from the Proposal of the average burden hours per response due to changes in Regulation 1.3(ggg)(4)(i)(B)(5) as adopted from the regulation as proposed regarding the notice requirement.

**Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 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. The Commission has neither considered nor made any payment or gift to a respondent.

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

The Commission will protect proprietary information according to the Freedom of Information Act and the regulations that the Commission has promulgated to protect the confidentiality of collected information. These regulations are contained in 17 CFR 145, "Commission Records and Information." In addition, section 8(a) of the CEA provides for the confidentiality of data and information, except under the limited circumstances delineated therein. The Commission also is required to protect certain information pursuant to the Privacy Act of 1974.

**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. The proposed regulation does not request or require the provision of sensitive information, as that term is used in Item 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.**

The Commission staff estimates that the person will incur one half hour of burden initially and one half hour annually thereafter as a result of consulting and reviewing representations received from utility special entities and any other books and records. The Commission estimates that 2,000 persons will make one response annually for a total of 2,000 responses. Each response will take approximately one half hour for a total annual burden of 1,000 hours.

**13. Provide an estimate of the total annual cost burden to respondents or recordkeepers 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.**

The proposed rule involves no new start-up or operations and maintenance costs.

- 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.**

It is not anticipated that the final regulations will impose any additional costs to the Federal Government.

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

See response to 12., above.

- 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.**

Not applicable.

- 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.**

Not applicable.

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

Not applicable.

**OMB Control Number 3038-0090 – EXCLUSION OF UTILITY OPERATIONS-RELATED SWAPS WITH UTILITY SPECIAL ENTITIES FROM *DE MINIMIS* THRESHOLD FOR SWAPS WITH SPECIAL ENTITIES.**

Estimated # of Respondents or Recordkeepers Per Year	Reports Annually by Each Respondent	Total Annual Responses	Estimated Average Number of Hours per Response	Estimated Total Annual Number of Hours	Cost per response <sup>1</sup>	Total Annual cost of all responses <sup>2</sup>
2,000	1	2,000	0.5	1,000	\$80.50	\$161,000

<sup>1</sup> Costs per response is \$80.50, which represents hourly salary for a financial analyst (\$161) multiplied by 0.5 hour. Estimate of the hourly cost is from SIFMA's Management & Professional Earnings in the Securities Industry 2010, modified by CFTC staff to account for an 1800-hour work year and multiplied by 5.25 to account for firm size, employee benefits and overhead.

<sup>2</sup> Total annual costs determined by multiplying \$80.50 x 2,000 annual responses.