

## SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

### Clearing Exemption for Certain Swaps Entered into by Cooperatives

OMB CONTROL NUMBER 3038-0102

Rule 50.51 (Exemption for Cooperatives)

#### 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 Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended Section 2(h)(1) of the Commodity Exchange Act (“CEA”)<sup>1</sup> to provide that it shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization if the swap is required to be cleared. Section 2(h)(7) of the CEA, as added by the Dodd-Frank Act, also provides that a swap otherwise subject to the clearing requirement is eligible for an elective exception from clearing if one party to the swap is not a financial entity, is using swaps to hedge or mitigate commercial risk, and notifies the Commodity Futures Trading Commission (“Commission”), in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps (the “end-user exception”).

The Commission recognized that cooperatives not otherwise eligible for the end-user exception often act on behalf of members that are non-financial entities or small financial institutions, and have a member ownership structure that merits the pass-through of the end-user exception. On August 13, 2013, the Commission adopted an exemption from the swap clearing requirement for cooperatives under Commission regulation 50.51. The cooperative exemption rule allows for certain cooperatives to elect not to clear certain swaps subject to the clearing requirement.

This supporting statement concerns the renewal of the existing collection of information required by Commission regulation 50.51. The information that has been collected is necessary to monitor the use of the cooperative exemption to the swap clearing requirement. In addition, this collection of information provides the Commission with data about exempt cooperatives’ use of swaps to hedge or mitigate commercial risk. This information is reported to a swap data repository (“SDR”) or directly to the Commission under the reporting requirements in Regulation 50.50(b).

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<sup>1</sup> 7 U.S.C. 1 *et seq.*

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.

Since the Commission adopted Commission regulation 50.51 in 2013, the information has been reported to provisionally-registered SDRs and analyzed by Commission staff to determine whether cooperatives claiming the exemption are 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. Commission staff has observed that nearly twice as many exempt cooperatives elect to file the clearing exemption report on an annual basis. Approximately one third of the exempt cooperatives that elect the clearing exemption file a report on a swap-by-swap basis.

Commission staff expects that the number of exempt cooperatives filing an annual versus a swap-by-swap form electing the exemption from the clearing requirement may change each year. Based on observations, it is rare that an exempt cooperative will file more than one report of election of the cooperative exemption each year.

- 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. Commission regulations require reporting of the election of the clearing exemption for each swap for which the exemption is elected, on a swap-by-swap or annual basis.

- 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 Commission has procedures to protect the confidentiality of a respondent's information set forth in the Commission's regulations at parts 145 and 147 of title 17 of the Code of Federal Regulations.

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.

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.

On June 30, 2016, the Commission published in the Federal Register, 81 FR 42667, a notice of proposed collection of information related to the cooperative exemption to the Commission's swap clearing requirement, described in Commission regulation 50.51. The comment period for this proposal ended on August 29, 2016.

The Commission received one comment on August 28, 2016. The commenter expressed support for the clearing exemption generally, but did not provide a reaction to the proposed information collection. The comment did not include any data related to the number of exempt cooperatives that are subject to this information collection or express a view about the burden placed on exempt cooperatives as a result of this information collection.

After considering the one comment from the public regarding the renewal of this collection of information from exempt cooperatives, the Commission determined to adopt the renewal as it was proposed.

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 does not provide respondents with an assurance of confidentiality. The Commission fully complies with section 8(a)(1) of the Commodity Exchange Act, which strictly prohibits the Commission, unless specifically authorized by the Commodity Exchange Act, from making public “data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.” The Commission has procedures to protect the confidentiality of an applicant’s or registrant’s data. These are set forth in the Commission’s regulations at parts 145 and 147 of title 17 of the Code of Federal Regulations.

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. Commission staff estimates that 25 respondents will each file one response annually. Each response is expected to require approximately one hour. The total annual hour burden for this information collection is estimated to be 25 hours, in aggregate, for all respondents. The estimated average burden cost is \$60.40 per hour.<sup>2</sup> The total annual cost burden to respondents based on this collection of information is approximately \$1,510.

After reviewing SDR data between 2014 and 2016, Commission staff has identified approximately 25 cooperatives that would qualify as respondents to this collection of information. Commission staff based this estimate on the number of cooperatives in the previous two years that have elected the exemption in connection with a swap transaction and satisfied the requirements in Commission regulation 50.51.

The Commission expects that it may take an exempt cooperative between 30 minutes and 90 minutes to fill out the annual election form. This estimate is unchanged from the original request for OMB approval of information collection under OMB 3038-0102. Based on this range, the Commission estimates that each of the 25 respondents will spend one hour preparing and submitting the annual form electing the cooperative exemption from the swap clearing requirement. The average hourly burden of one hour is in line with Commission's previous estimate and estimates in information collection notices for the end-user exception and inter-affiliate exemption.

The estimated total annual hour burden is based on the assumption that approximately two-thirds of exempt cooperatives will file a report on an annual election form to an SDR indicating that they are electing the cooperative exemption to the swap clearing

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<sup>2</sup> The cost of the hourly burden per annual report is estimated to be \$60.40. This estimate is based on information from the Securities Industry and Financial Markets Association's report titled *Management & Professional Earnings in the Securities Industry*, published in October 2013. The wage rate used is a composite (blended) wage rate by averaging the mean annual salaries of an Assistant/Associate General Counsel, an Assistant Compliance Director, and a Programmer (Senior) as published in the 2013 report and dividing that figure by 2000 annual working hours to arrive at the hourly rate of \$60.40.

requirement. The estimated total annual hour burden assumes that the remaining one-third of exempt cooperatives will file a report on a swap-by-swap election form to an SDR electing the cooperative exemption. The number of swap transactions entered into by an exempt cooperative should not change the hourly burden estimate if the exempt cooperative files an annual election form. Based on SDR data observed, exempt cooperatives choosing to file a report on the swap-by-swap election form do not submit more than one form per year. Commission staff notes that the two forms contain the same information and would require staff at an exempt cooperative to gather the same amount of information. Commission staff expects that the annual burden of one hour will be consistent regardless of the type of election form filed because exempt cooperatives are expected to file only one form per year.

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. The Commission does not anticipate any additional cost burdens to respondents other than the hourly costs estimated in Question 12.

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 additional costs to the Federal Government will result from the renewal of this collection of information.

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

As discussed in response to Question 12, the Commission is revising the burden estimate for this collection of information to reflect the current estimated number of respondents and the expected total annual reporting burden.

Commission staff has increased the estimated number of respondents from ten to 25 based on a review of data reported to four provisionally-registered SDRs. In the Commission's final rule it noted that the adoption of an exemption for certain cooperatives could encourage a number of cooperatives to use swaps.<sup>3</sup> The increase in the number of eligible exempt cooperatives that are using swaps pursuant to the Commission's exemption under rule 50.51 is consistent with expectations. Commission staff will continue to monitor the number of exempt cooperatives entering into swaps and electing this exemption to see whether the number of respondents continues to increase in the future.

Although the number of estimated respondents increased, the estimated total burden hours and total burden hours cost decreased. In this renewal, Commission staff estimated that the number of burden hours per response would equal one hour. Commission staff found that a majority of exempt cooperatives are filing annual forms electing the cooperative exemption to the clearing requirement.

Separately, the total annual cost burden has been revised to remove the initial adaptation costs. Estimates for the one-time cost to update reporting procedures that were expected to be incurred by exempt cooperatives in the first year of the rule are no longer applicable.

The average burden cost per hour was revised to reflect updated salary information collected in 2013. The \$60.40 average burden cost per hour used in this collection of information is less than the estimated hourly costs used in the previous collection of information estimate ranging from \$208 per hour to \$390 per hour.

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<sup>3</sup> See 78 FR 52286 at 52306 (Aug. 22, 2013).



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

Clearing Exemptions for Certain Swaps Entered into by Cooperatives

OMB CONTROL NUMBER 3038-0102

Rule 50.51 (Exemption for Cooperatives)

Reporting Costs for the Estimated 25 Exempt Cooperatives

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Reports by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number of Burden Hours per Respondent (3 x 4)	6. Estimated Average Burden Hour Cost	7. Total Average Hour Burden Cost Per Respondent (5 x 6)	8. Total Annual Responses (2 x 3)	9. Total Annual Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (6 x 9)
50.51(c)	25 <sup>4</sup>	1	1	1	\$60.40 <sup>5</sup>	\$60.40	25	25	\$1,510

<sup>4</sup> The estimated number of respondents is based on the number of entities electing the exempt cooperative status in filings submitted to one of the Commission's provisionally-registered SDRs. Based on the number of entities that elected the cooperative exemption to the clearing requirement, the Commission believes that approximately 25 entities that are eligible for the cooperative exemption, as outlined in Commission regulation 50.51, are entering into swaps and electing the exemption to the clearing requirement.

<sup>5</sup> In arriving at a wage rate for the hourly costs imposed, Commission staff used the *Management & Professional Earnings in the Securities Industry Report*, published in October 2013 by the Securities Industry and Financial Markets Associations (Report). The wage rate used is a composite (blended) wage rate by averaging the mean annual salaries of an Assistant/Associate General Counsel, an Assistant Compliance Director, and a Programmer (Senior) as published in the 2013 report and dividing that figure by 2000 annual working hours to arrive at the hourly rate of \$60.40.