



May 27, 2014

Melissa D. Jurgens, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Comments on Review of Swap Data Recordkeeping and Reporting Requirements, 79 Fed. Reg. 16689 (March 26, 2014) (the “Release”) – RIN 3038-AE12

Dear Ms. Jurgens:

The NFP Electric Associations¹ appreciate the Commodity Futures Trading Commission (the “Commission”) beginning the process to review and propose amendments to the various swap recordkeeping and transaction reporting rules. In addition to these general comments, the NFP Electric Associations submit the comments attached as Attachment B in response to specific questions posed by the Commission.

The NFP Electric Associations, in cooperation with other energy industry entities and associations, have been active participants in the Commission’s rulemakings implementing Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). The NFP Electric Associations have commented on all the Commission’s rulemakings in respect of swap recordkeeping and historical and ongoing swap transaction reporting applicable to “non-registrants.”² A list of the NFP Electric Associations’ prior comment letters on these

¹ The National Rural Electric Cooperative Association (“NRECA”), the American Public Power Association (“APPA”), and the Large Public Power Council (“LPPC”) (collectively, the “NFP Electric Associations.”). See Attachment A for a description of the members of each NFP Electric Association. The comments contained in this filing represent the comments and recommendations of the NFP Electric Associations, but not necessarily the views of any particular member of any NFP Electric Association on any issue. The NFP Electric Associations are authorized to note the involvement of the following organizations and associated entities to the Commission, and to indicate their full support of these comments and recommendations: ACES and The Energy Authority.

² The NFP Electric Associations will adopt the term “non-registrant” as used in the Release for purposes of responding to the questions posed in the Release. In some of its swap transaction reporting rules, the Commission uses the term “non-SD/MSP counterparty” to reference entities that are counterparties to swaps, but not registered with the Commission as swap dealers or major swap participants. Elsewhere in its rules, interpretations and guidance, the Commission uses the terms “end-user,” “commercial end-user,” “commercial market participant,” “commercial entity” and “bona fide hedger.” In earlier comments on the Commission’s swap reporting rules, the NFP Electric Associations used the term “bona-fide hedgers only.” The NFP Electric Associations’ members meet all these definitions, as they enter into energy and energy-related commodity swaps, nonfinancial commodity forward and trade option transactions (intended to be physically settled), and other customary commercial

topics is provided on Attachment C, with links to the Commission's website. Several of the themes in this letter and its Attachments echo the comments that the NFP Electric Associations have made since 2010.

Since the final swap transaction reporting rules were published, the NFP Electric Associations have offered on several occasions to assist with the efforts to harmonize the various swap transaction reporting rules.³ The NFP Electric Associations have met with Commissioners and staff, and provided side-by-side comparisons of the rules, to point out inconsistencies and ambiguities from the standpoint of non-registrants. The NFP Electric Associations' members are commercial end-users of energy commodities and commodity swaps, and active in the regional geographic markets for energy and energy-related commodities and commodity swaps that they use to hedge the commercial risks arising from electric operations.

The NFP Electric Associations commented in Office of Management and Budget (OMB) proceedings relevant to the swap transaction reporting rules on the Commission's generalized and overstated description of the benefits of such rules, and on the Commission's underestimates of the costs and burdens of such rules, in particular on "small entities," a term that includes many of the NFP Electric Associations' members.⁴ The OMB comment letters are also listed on Attachment C and links are provided. The NFP Electric Associations have also asked for relief and for no-action for their members and other commercial end-users from various aspects of the swap recordkeeping and transaction reporting rules.⁵

transactions involving nonfinancial energy commodities solely to hedge or mitigate the commercial risks of ongoing operations.

³ The concept of "harmonizing" the data elements, and harmonizing the reporting rules themselves, appears throughout the adopting releases for Parts 46, 45 and 43, published in early 2012. However, that was more than two years ago. The final rules are now effective, implementation has been phased in and compliance dates have passed. Market participants, including non-registrants like the NFP Electric Associations' members, have begun compliance with such rules. Before the Commission can amend the rules, it must open a rulemaking and propose the changes it wants to make, consider public comments and conduct a cost-benefit analysis before finalizing any such amendments. The NFP Electric Associations' members and other non-registrants have spent millions of dollars implementing new financial reporting systems and training personnel, establishing interfaces with swap data repositories ("SDRs") and modifying transaction procedures and information capture systems to comply with the rules as written. Any change in the transaction data collected, or the process by which the data is collected, will have to be accomplished through the rulemaking process. Moreover, the NFP Electric Associations respectfully request that any rule amendments be implemented in phases, by asset class and by type of reporting entity, to allow non-registrants sufficient time to finance and transition systems and personnel to complying with any such amendments. For non-registrants, especially for end-users of nonfinancial commodity swaps for commercial risk hedging purposes, the systems and personnel required by the Commission's detailed swap transaction reporting rules do not serve a commercial business function, but have been purpose-built to comply with the Commission's rules.

⁴ The vast majority of the NFP Electric Associations' members are "small entities" for purposes of the Regulatory Flexibility Act, as amended by SBREFA (collectively, "SBREFA"), which incorporates by reference the definition of "small entity" adopted by the Small Business Administration (the "SBA").

⁵ Although the Commission does not publish requests for no-action, a number of such requests filed by the NFP Electric Associations or other energy industry groups are referenced or links are provided in the NFP Electric Associations' comments filed in the April 3, 2014, Public Roundtable docket cited in footnote 6, *supra*.

Since the swap transaction rules were finalized in early 2012, the NFP Electric Associations appreciate the continuing evolution in the Commission's rules, and commentary in adopting releases, reflecting the Commission's growing understanding of the market structure differences for the financial vs. "Other Commodity" asset classes, and within the "Other Commodity" asset classes, by category of "swaps." The NFP Electric Associations also appreciate the Commission's recent Public Roundtable held on April 3, 2014, to discuss one of the fundamental issues that underlies many of the difficulties with the Commission's "swap" recordkeeping and transaction reporting rules as those rules apply to energy industry transactions: the appropriate regulatory treatment of nonfinancial commodity transactions that are, or contain, "options or "optionalities," but where the parties nonetheless intend physical settlement.

The Commission has acknowledged publicly that it cannot decipher much of the swap transaction data that continues to pour into the SDRs. For the NFP Electric Associations' members involved in nonfinancial energy commodity transactions and swaps, this does not come as a surprise. Since September of 2010 in comments on Commission rulemakings, the NFP Electric Associations have requested clear rules distinguishing nonfinancial commodity "swaps" from everyday commercial energy industry contracts involving nonfinancial commodities. Such everyday commercial transactions may have some of the characteristics of options, optionalities, option-like pricing or other option-like terms discussed in the Commission's interpretations in the Product Definitions Release.⁶ But whether the transactions are options or contain optionalities does not answer the question at hand: whether such transactions are or are not "swaps." It is impossible to begin a review of the Commission's reporting rules applicable to such transactions without noting that commercial end-users/non-registrants cannot consistently report data about a category of nonfinancial commodity transactions ("swaps") that cannot be identified.

As discussed at the Public Roundtable, two counterparties negotiating a bilateral natural gas or electricity transaction, acting in good faith and represented by experienced lawyers, reading the Commission's rules, interpretations and guidance, might not be able to agree on an answer to the question: "Is the transaction we are about to execute a 'swap'?" One party may conclude in good faith that a commercial transaction involving nonfinancial energy commodities is a "swap" (and report it as such, if required to do so). Another party to the same transaction may conclude in good faith that the transaction is a commodity option, but within the trade option exemption. Such a transaction is reportable as a "swap," but for some but not all parties and in some but not all cases, the transaction may require a report of transaction data. For some but not all parties and for some but not all cases, the transaction may instead require a report of transaction "exercise" data at a later time. As a third alternative, one of the parties may conclude in good faith that the same transaction is a non-reportable, non-CFTC-jurisdictional commercial transaction. That party may conclude that the transaction is a nonfinancial commodity forward

⁶ See the NFP Electric Associations comment letter on the Product Definitions Release at <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59235&SearchText=>, and most recently our comments submitted in the docket for the Public Roundtable at: <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59822&SearchText=>.

with optionality that meets one or more of the Commission's interpretations. Or it may conclude that the transaction is a "customary commercial transaction entered into as part of operations," or exempted under one of the Commission's exemption orders (as meeting the conditions in that order). Or the party may conclude the transaction is simply excluded from the Commission's jurisdiction over "swaps" by CEA 1a(47)(B)(ii), as there is no question that the parties intend physical settlement. As a consequence of such regulatory uncertainty, the very same nonfinancial energy commodity transaction may be reported once, twice or not at all under the Commission's current swap transaction reporting rules.

The Commission is respectfully requested to sequence and prioritize any further rulemaking in such a way that, within the "Other Commodity" asset class of swaps and particularly for nonfinancial energy and energy-related transactions, regulatory certainty is provided regarding *which transactions* are to be reported as "swaps,"⁷ before the Commission proposes amendments to its rules as to *what data (and what level of data granularity) is to be collected and the frequency of the Commission's data collection activities about those "swap" transactions.*

As more fully explained in the comments in Attachment B, the NFP Electric Associations request that the Commission approach its review of the swap recordkeeping and transaction reporting rules by swap asset class -- beginning with the financial commodity asset classes. The financial commodity swap asset classes have a more uniform and consistent market structure, market participants, and standardization of commercially-important data elements, than the nonfinancial commodity, or "Other Commodity," asset class. Moreover, as the Commission has now recognized, within the energy commodity and commodity swaps markets, there are a significant number of "end-user-to-end-user" or "non-registrant-to-non-registrant," off-facility, non-cleared swaps, where no regulated entity or registrant is available to bear the burdens of transaction reporting. Many of these energy or energy-related commodity swaps are highly customized, making it difficult to translate the transaction data into reportable data elements.⁸

⁷ The NFP Electric Associations respectfully request the Commission to act on the request for reconsideration of the Commission's interpretation of CEA Section 1a(47), added to the CEA by Section 721 of the Dodd-Frank Act, that all commodity options are "swaps." See Section X of the comment letter, dated October 12, 2012, at: <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59235&SearchText=>.

Pending reconsideration of the fundamental legal issue, the NFP Electric Associations respectfully request the Commission to withdraw the interpretations entitled "Commodity Options Embedded in Forward Contracts" and the interpretation entitled "Certain Physical Commercial Agreements, Contracts or Transactions, contained in Section II(B)(2)(b)(ii) and (iii) of the Product Definitions Release. The interpretations are found in Section II.B.2 of the Product Definition Release. The energy industry requests to withdraw these two interpretations are found in the comment letters on the Product Definitions Release, filed on or before October 12, 2012 and listed in Attachment B and in the comments linked in the Public Roundtable docket filing cited in footnote 6.

⁸ Any changes to the Commission's data collection activities via amendments to its transaction reporting rules for this category of swaps will result in costs and burdens that fall either completely or disproportionately (in relation to the benefits of collecting such non-standardized swap transaction data) on non-registrants.

In the NFP Electric Associations' prior comments on Commission swap transaction reporting rules, one of the main concerns was the "one-size-fits-all" approach taken by the Commission to collecting such transaction data. The NFP Electric Associations asked for a "CFTC-lite" regulatory reporting regime for transactions between non-registrants. The NFP Electric Associations challenged the Commission to explain why non-registrants (commercial end-users or "bona fide hedgers only") should bear significant burdens to report non-standardized, off-facility, end-user-to-end-user swaps in the same granular detail that global banks report fungible credit default swaps traded with other interconnected financial institutions.

However, the Commission's swap transaction reporting rules are now final and effective using that "one-size-fits-all" approach to reporting transaction data. The requirements to report the first "swap", or just a few swap transactions, along with continuation and valuation data in respect of those swaps, fall most heavily on those non-registrants that enter into one or just a few non-standardized, nonfinancial commodity "swaps" with other non-registrants to hedge or mitigate commercial risks arising from ongoing operations.⁹ As was discussed at the Commission's Public Roundtable on April 3, 2014, some of the NFP Electric Associations' members – even the largest and most sophisticated – have simply stopped hedging the commercial risks of electric operations, and the costs of the electric services provided to their constituent customers, using "swaps" (or nonfinancial commodity commercial transactions with embedded options or optionalities previously common in specific geographic markets).

If the Commission proposes to amend its swap recordkeeping and transaction reporting rules in any manner that affects non-registrants, the NFP Electric Associations respectfully request compliance with SBREFA. The NFP Electric Associations also reserve the right to require that the Commission show the steps it has taken, and the alternatives it has considered (including the alternatives proposed by the NFP Electric Associations), to reduce the costs and regulatory burdens that its swap recordkeeping and transaction reporting rules and interpretations impose on "small entities."

The Commission must demonstrate that the costs and burdens of any such amendments are necessary to accomplish an identified regulatory objective, and that such regulatory objectives cannot otherwise be achieved by alternative regulatory approaches that commenters recommend, while reducing the costs and regulatory burdens imposed on "small entities."¹⁰

⁹ To report a single electricity "swap" transaction, one of two end-user counterparties is expected to report 84+ transaction data elements within 48 hours (now 36 hours, since April 10, 2014) to an SDR. Before reporting such transaction, the two non-registrants must agree which one would assume such reporting party obligations, and establish the necessary electronic reporting interface with an SDR. All this while both parties, if utilities like the NFP Electric Associations' members, continue to deliver 365/24/7 electric service at affordable rates to American business and residential electric customers. The "swap" transaction reporting rules provide no benefit to the operations of the NFP Electric Association member utility, and the costs of such reporting have increased electric rates, and diverted resources from infrastructure development and job creation.

¹⁰ The NFP Electric Entities respectfully request that the Commission evaluate the aggregate costs and benefits of its transaction reporting rules as well as its interpretations, no-action letters and guidance provided in other forms, to the extent that such statements of regulatory policy have the effect of rules and impose significant costs and burdens

Finally, the NFP Electric Associations respectfully request that the Commission grant no-action relief, or otherwise waive or suspend the swap transaction reporting requirements under its current rules for all non-registrants. In the alternative, the Commission should provide such relief to all non-registrants that are “commercial end-users” of swaps in the “Other Commodity” asset class. In the alternative, the NFP Electric Associations respectfully request that the Commission grant such relief for all non-registrants that transact in nonfinancial energy and energy-related commodities for deferred shipment or delivery where the parties intend physical settlement.

Such relief should extend until such time as the Commission amends its rules, and the interpretations and guidance binding on the Commission, to clearly define the term “swap” as applicable to nonfinancial commodity transactions where the parties intend physical settlement. Such relief should also extend until such time as the Commission explains the regulatory purpose for collecting any amended (or expanded) swap data, amends its rules to collect only such data elements as are targeted to achieve its regulatory purposes, conducts a full cost-benefit and SBREFA analysis, and establishes a reasonable and achievable implementation and compliance phase in period for the amended rules. There is simply no reason that the Commission should continue to collect unusable data (while the SDRs collect fees from market participants for reporting and storing such unusable data), and while the NFP Electric Associations’ members and other non-registrants/commercial end-users struggle to comply in good faith with rules, interpretations and guidance that have yet to be clarified and harmonized.

Please contact any of the NFP Electric Associations’ undersigned representatives or Patricia Dondanville, Reed Smith LLP, 10 South Wacker Drive, 40th Floor, Chicago, Illinois 60606, telephone (312) 207-3911 or at pdondanville@reedsmith.com for more information or assistance.

**SWAP RECORDKEEPING AND REPORTING --
RESPONSES TO THE COMMISSION'S QUESTIONS – MAY 27, 2014**

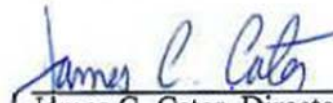
Respectfully submitted,

**NATIONAL RURAL ELECTRIC
COOPERATIVE ASSOCIATION**



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ATTACHMENT A - DESCRIPTION OF THE NFP ELECTRIC ASSOCIATIONS

NRECA is the national service organization for more than nine hundred rural electric utilities and public power districts that provide electric energy to approximately forty-two million consumers in forty-seven states or thirteen percent of the nation's population. Kilowatt-hour sales by rural electric cooperatives account for approximately eleven percent of all electric energy sold in the United States. Because an electric cooperative's electric service customers are also members of the cooperative, the cooperative operates on a not-for-profit basis and all the costs of the cooperative are directly borne by its consumer-members.

APPA is the national service organization representing the interests of government-owned electric utilities in the United States. More than two thousand public power systems provide over fifteen percent of all kilowatt-hour sales to ultimate electric customers. APPA's member utilities are not-for-profit utility systems that were created by state or local governments to serve the public interest. Some government-owned electric utilities generate, transmit, and sell power at wholesale and retail, while others purchase power and distribute it to retail customers, and still others perform all or a combination of these functions. Government-owned utilities are accountable to elected and/or appointed officials and, ultimately, the American public. The focus of a government-owned electric utility is to provide reliable and safe electricity service, keeping costs low and predictable for its customers, while practicing good environmental stewardship.

LPPC is an organization representing 26 of the largest government-owned electric utilities in the nation. LPPC members own and operate over 86,000 megawatts of generation capacity and nearly 35,000 circuit miles of high voltage transmission lines, representing nearly 90% of the transmission investment owned by non-Federal government-owned electric utilities in the United States.

**ATTACHMENT B –QUESTIONS FROM THE COMMODITY FUTURES TRADING
COMMISSION RELEASE,¹ AND THE NFP ELECTRIC ASSOCIATIONS’
COMMENTS IN RESPONSE (IN BLUE)**

A. Confirmation Data (Sec. 45.3): *What terms of a confirmation of a swap transaction should be reported to an SDR as “confirmation data”?*

1. What information should be reported to an SDR as confirmation data? Please include specific data elements and any necessary definitions of such elements.

The NFP Electric Associations refer to the comments filed in previous dockets for the Commission’s swap transaction reporting rules.² If the Commission proposes amendments to its swap reporting rules, it cannot do so based on theoretical discussions about what should be reported and what is necessary to achieve the Commission’s broadly-stated (or unstated) regulatory purposes. The Commission is not writing on a blank canvas. There are in place detailed final swap transaction reporting rules that require certain entities (and not others) to report certain data for transactions that are executed in certain swap asset classes to a swap data repository (an “SDR”), within certain time periods and in certain formats. There are also in place detailed final rules about which of the data elements collected by the Commission are to be “publicly disseminated” by the SDRs.

Before the Commission proposes amendments to its transaction reporting rules for any swap asset class and, within the “Other Commodity” swap asset class, for any category of swaps, the Commission should conduct one or more technical conferences with participation from regulated entities (SDRs, DCOs, SEFs), registrants (SDs and MSPs), and other market participants (“non-

¹ Review of Swap Data Recordkeeping and Reporting Requirements, 79 Fed. Reg. 16689 (March 26, 2014) – RIN 3038-AE12.

² The comments of the NFP Electric Associations in the prior swap recordkeeping and transaction reporting dockets were filed in 2010 and 2011, and are listed on Attachment C. Each set of comments spoke as of the time the comments were filed. Note however that, due to the way that the Commission sequenced its rulemakings, all these comments were filed *before* the Commission published its interpretations of Commodity Exchange Act 1a(47) – including its decision that all commodity options are “swaps” -- in “Further Definition of “Swap,” “Security-Based Swap,”” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48208 (August 23, 2012)(the “Product Definitions Release”). Consequently, when the Commission’s swap recordkeeping and transaction reporting rules were proposed, the NFP Electric Associations and other energy industry market participants had no notice or opportunity to comment on the challenges that would arise in determining which energy commodity transactions are (or may be) “swaps” requiring transaction reporting, much less the challenges of identifying all the data elements necessary to report such energy commodity transactions.

registrants”)³ that are active in the market(s) for that asset class or category of commodity swap. The Commission must propose specific amendments to the required data elements of information that it collects, and propose amended definitions if the Commission determines amendments are required. The Commission must perform a cost/benefit analysis regarding such proposed amendments, and seek public comment before amending its rules to collect additional or different data from the public.⁴ The NFP Electric Associations recommend that the Commission *reduce*, not increase, the number of data elements it collects in respect of “Other Commodity” swaps.

The Commission should prioritize proposals to amend its rules by proposing amendments first to the swap transaction reporting rules applicable to interest rate, credit and other financial asset classes. Financial commodity swaps are more standardized, with fewer variable data elements than “other,” or nonfinancial, commodity swaps. Also, unlike the nonfinancial commodity swap markets, the markets for financial commodity swaps do not involve a significant number of off-facility, non-cleared swaps, or a significant number of swaps without a regulated entity or a registrant to act as the reporting entity.⁵ Only after such transaction reporting rules are amended, finalized, tested and produce consistently useful transaction data should the Commission propose amendments to the swap transaction reporting rules for categories of “other” commodity swaps.

³ In the Release, the Commission uses the term “non-registrant” to mean a market participant that is not registered with the Commission for any purpose, including as a “swap dealer” (SD) or a “major swap participant” (MSP). In other recordkeeping and transaction reporting rulemakings and final rules, the Commission uses the terms “end user,” “commercial end-user” and “non-SD/MSP counterparty.” The NFP Electric Associations’ members fit within each of these categories. Consequently, the NFP Electric Associations are providing comments in response to the Release’s questions from the perspective of a “non-registrant.” In addition, the vast majority (more than 2800) of the NFP Electric Associations’ members are also “small entities” for purposes of the Regulatory Flexibility Act, as amended by SBREFA (collectively, “SBREFA”), which incorporates by reference the definition of “small entity” adopted by the Small Business Administration (the “SBA”).

⁴ This is particularly important in the context of energy commodity transactions, where the Commission’s “swap” transaction reporting rules currently collect data on nonfinancial commodity transactions for deferred shipment or delivery where the parties intend physical settlement, as a result of the ambiguous CFTC interpretations of what is, and is not, a “swap” in the Product Definitions Release.

⁵ As noted in the cover letter, until such time as the swap transaction reporting rules applicable to energy and energy-related swaps are amended, and implementation and compliance periods lapse, the NFP Electric Associations respectfully request that the Commission grant no-action relief, or otherwise waive or suspend the swap transaction reporting requirements under its current rules for all non-registrants, for non-registrants that are commercial end-users of swaps in the “Other Commodity” asset class, and/or for all non-registrants that are counterparties to nonfinancial energy and energy-related commodity transactions for deferred shipment or delivery where the parties intend physical settlement. Until such no-action relief is provided, the Commission (through the SDRs) continues to collect unusable data at great expense to non-registrants, and in particular to commercial end-users like the NFP Electric Associations’ members.

If the Commission proposes to amend its swap recordkeeping and transaction reporting rules applicable to nonfinancial commodity swaps, the Commission must explain in its cost/benefit analysis the regulatory benefit of collecting any different or incremental data from non-registrants that are counterparties to non-standardized, off-facility, non-cleared transactions derived on “other” commodities. The Commission must also explain the specific regulatory purpose for any proposed amendment to the level of granularity of the data elements collected. Market/price transparency is a benefit in a standardized, trading transaction market structure. However, for non-standardized, commercial transactions involving non-registrants, the Commission must consider the burdens imposed by its data collection activities on non-registrant commercial risk hedgers that participate in illiquid/non-standardized, nonfinancial commodity markets. In those markets, and for those market participants, “transparency” is not a benefit, but a potential risk to disclosure of confidential commercial business and market strategies.

Any amendments to the swap recordkeeping and transaction reporting rules, especially to change or increase the Commission’s data collection activities, will impose costs on the NFP Electric Associations’ members that choose to enter into nonfinancial commodity swaps. For each asset class and/or category of swaps, the Commission must consider on what types of entities those costs will fall: regulated entities, registrants, or “non-registrants.”⁶

a. For confirmations that incorporate terms by reference (e.g., ISDA Master Agreement; terms of an Emerging Markets Trade Association (“EMTA”)), which of these terms should be reported to an SDR as confirmation data?

Each bilateral master agreement has both standardized (form) and negotiated provisions. Even the basic provisions in a standardized form of master agreement can be renegotiated by the parties in the schedule, cover sheet, annexes and other bilateral incorporated documents, or in individual transactions under the master agreement.⁷ Consequently, the mere identification of a

⁶ For energy commodity swaps, there are more non-standardized, nonfinancial commodity transactions entered into off-facility between non-registrants (and where the “swap/not-a-swap” line is unclear). For the energy commodity swap categories, the cost-benefit analysis of any proposed amendments should include a SBREFA analysis to specifically quantify and justify the regulatory costs imposed by such amendments on “small entity” non-registrants.

⁷ This is particularly important in the context of energy commodity transactions, where the Commission’s “swap” transaction reporting rules currently collect data on nonfinancial commodity transactions for deferred shipment or delivery where the parties intend physical settlement, as a result of the ambiguous CFTC interpretations of what is,

standardized master agreement form does not provide useful or usable data about the terms of the bilateral non-cleared, off-facility swap between two counterparties.

2. Should the confirmation data reported to an SDR regarding cleared swaps be different from the confirmation data reported to an SDR regarding uncleared swaps? If so, how?

If and when a swap is cleared and thereafter, all information about the swap should be reported to the SDR solely by the DCO – the DCO is the “single best source” of such data. The Commission’s swap reporting rules should be revised to use the active voice, and to consistently require that the “single best source” of transaction data is the only entity with a regulatory reporting obligation (the only entity from which the Commission collects transaction data) for a particular swap. Requiring any other source (DCM, SEF, reporting party), or multiple sources, to report transaction data is a duplicative and unnecessary cost, and will continue to introduce inconsistencies and reporting errors and omissions into the SDR swap transaction data reporting system. The “single best source” principle should also streamline the Commission’s transaction data collection efforts, such that the Commission collects the transaction data once, not multiple times, and from the reporting entity most appropriate to bear the costs of such data collection activities.⁸

Confirmation data (for cleared swaps) should be limited to the data that the DCO considers material to its clearing decision – focusing the data elements to primary economic terms of a particular standardized, fungible, cleared swap. Confirmation data that is collected for swaps executed on a regulated DCM or SEF entity should include the primary terms of the listed swap contract. Requiring/allowing multiple regulated entities, registrants and non-registrants to make individual decisions about what data should be

and is not, a “swap” in the Product Definitions Release.” Many non-registrants enter into both “swap” and “non-swap” transactions under a single master agreement.

⁸ As the NFP Electric Associations recommended in comments on the proposed swap transaction reporting rules (see Attachment C), the Commission should receive “entity data” from each regulated entity or registrant itself, not as part of swap transaction data reporting. The Commission also receives (or should receive) position data under its large trader reporting rules, and potentially under its position limits rules. The Commission receives other data via periodic “special calls,” or can request data by conducting studies of particular markets or market participants. The NFP Electric Associations respectfully request that the Commission not attempt to achieve all of its regulatory objectives through swap transaction reporting rules. Burdensome transaction reporting requirements impose significant costs and transaction delays when the parties to a bilateral swap transaction need to exchange detailed data that has no commercial significance, especially in illiquid energy commodity markets, where prices are volatile and where non-registrants have dynamically changing commercial risks to be hedged. As discussed at the Public Roundtable, such burdensome transaction reporting, compounded by the inability to identify which transactions are “swaps,” has driven many non-registrants away from hedging commercial risks in regional energy commodity swap markets.

reported, and about how an individual transaction or type of transaction is reported, will continue to introduce inconsistencies, duplication and reporting errors and omissions into the SDR swap data reporting system.

3. Should the confirmation data reported to an SDR regarding swaps that are subject to the trade execution requirement in CEA section 2(h)(8) be different from the confirmation data reported to an SDR regarding: (a) Swaps that are required to be cleared but not subject to the trade execution requirement; (b) swaps that are not subject to the clearing requirement but that are intended to be cleared at the time of execution; (c) swaps that are voluntarily submitted to clearing at some point after execution (e.g., backloaded trades); and (d) uncleared swaps? If so, how?

Swaps that are subject to a trade execution requirement must be traded on an exchange and must be cleared. The DCO's clearing requirements should establish the relevant level of standardization, fungibility and data granularity for purposes of the Commission's transaction reporting rules. Swaps that are cleared or "intended to be cleared" by the DCO – including a swap that, if not cleared, is void ab initio -- should be reported to the SDR only by the DCO. If a swap is "intended to be cleared," and "void ab initio" if it is not in fact cleared, there is no reason for the swap to be reported to the SDR by a SEF, DCM or a reporting party prior to clearing.

If a swap is submitted to a DCO *after* bilateral execution (either off-facility or as a Permitted Transaction on a SEF), the reporting party (or, if transacted on a SEF, then that regulated entity) should report the "alpha" or initial swap to the SDR, and then the DCO should report the "beta" and the "gamma" swaps which replace the alpha to the SDR when clearing takes place. The DCO should also report termination of the "alpha" swap.

The Commission should *not* use entity categorizations other than the Commission's regulated entity/registrator designations to assign reporting obligations in its rules. The categories used in the Commission's current rules are not required by the statute. The terms "U.S. Person" and "financial entity" are not defined for purposes of the reporting rules and, where the terms are defined in other parts of the Commission's rules or guidelines, the application of the definitions to some types of non-registrants is ambiguous.

Assigning regulatory significance to such undefined and changeable categories will continue to introduce inconsistencies, duplication and reporting errors and omissions into the SDR swap data reporting system.

As noted in the cover letter, the NFP Electric Associations respectfully request the Commission to evaluate what, if any, swap transaction data should be required to be reported by/collected by the Commission from, entities that are not regulated entities or registrants. The NFP Electric Associations respectfully request the Commission to conduct a cost-benefit analysis separately for any transaction data (and analyzing the granularity of the data) to be collected from non-registrants, including a SBREFA analysis to specifically quantify and justify the regulatory costs imposed on “small entities” that enter into energy commodity swaps to hedge or mitigate commercial risks.⁹

4. More generally, please describe any operational, technological, or other challenges faced in reporting confirmation data to an SDR.

The NFP Electric Associations respectfully request the Commission to evaluate what, if any, swap data should be required to be reported to SDRs by entities that are not regulated entities or registrants. The NFP Electric Associations respectfully request the Commission to conduct a cost-benefit analysis separately for any transaction data (and analyzing the granularity of the data) to be collected from such non-registrants, including a SBREFA analysis to specifically quantify and justify the regulatory costs imposed on “small entities” that enter into energy commodity swaps to hedge or mitigate commercial risks.¹⁰

Financial market utilities (DCOs, DCMs and SEFs) and registered SDs and MSPs have chosen to engage in a business model that requires registration with the Commission, and requires transaction capture systems and financial market reporting as part of ordinary course operations. Non-registrants have not chosen such a business model, and instead structure their information technology, finance and accounting systems differently. The NFP Electric Associations’ members are focused on their commercial business operations: the 365/24/7 delivery of electricity to their customers at affordable rates. The Commission should limit the swap recordkeeping and transaction reporting burdens imposed on such non-registrants. Collecting swap transaction data from such

⁹ This is particularly important in the context of energy commodity transactions, where the Commission’s “swap” transaction reporting rules currently collect data on nonfinancial commodity transactions for deferred shipment or delivery where the parties intend physical settlement, as a result of the ambiguous CFTC interpretations of what is, and is not, a “swap” in the Product Definitions Release.

¹⁰ This is particularly important in the context of energy commodity transactions, where the Commission’s “swap” transaction reporting rules currently collect data on nonfinancial commodity transactions for deferred shipment or delivery where the parties intend physical settlement, as a result of the ambiguous CFTC interpretations of what is, and is not, a “swap” in the Product Definitions Release.

entities imposes significant operational, technological and other challenges and burdens, which directly affect such entities ability to conduct commercial business. The detailed transaction-by-transaction data is not useable or useful in connection with such non-registrant's core commercial businesses.¹¹

The swap transaction data collection burdens and costs on non-registrants are not correlated to any identified, incremental regulatory benefit.¹² The non-standardized, nonfinancial commodity swap transactions between non-registrants do not represent systemic risk to the interconnected global financial system. The non-registrants' swap transactions often off-set (hedge or mitigate) commercial/physical market commodity risks, not other financial market contracts or risks. There is no regulatory benefit of "transparency" in disclosing, either to regulators or to competitors, a privately-negotiated, customized commercial risk hedging transaction.

If swap transaction data reporting is required of non-registrants, it should be periodic, not immediately post-transaction (and not more frequently than quarterly). The reports should collect a limited number of data elements designed to provide the Commission with only the data it needs for specific regulatory purposes (not all the transaction-by-transaction data the Commission might, in the future, decide it wants, and not all the transaction data it can store, regardless of whether such stored data is usable). The Commission should not collect as swap transaction data information that it can more efficiently acquire from other public sources, such as the Federal Energy Regulatory Commission, the Energy Information Administration, other government agencies or reports, or from regional transmission organizations.

¹¹ These comments are consistent with the comments that the NFP Electric Associations have made in prior dockets in respect of the Commission's swap transaction reporting rules.

¹² It is the Commission's responsibility to explain what data needs to be collected from the public to achieve its specific regulatory objectives in the most efficient way having considered alternatives, and while imposing the least burdens and costs on the public. It is not sufficient for the Commission to merely state that it needs broad categories, and detailed data elements, to fulfill its generalized "market surveillance and enforcement" objectives. Such generalizations impose significant and ongoing regulatory burdens on all market participants to provide the Commission with an ocean of data from which the Commission's staff may or may not have the time and technology to identify patterns of wrongful market behavior or extract evidence of violations by a few – punishing the innocent for the chance of catching the guilty. For energy commodity swaps, where there are more non-standardized, nonfinancial commodity transactions entered into off-facility between non-registrants (and where the swap/not-a-swap line is unclear), the cost-benefit analysis should include a SBREFA analysis to specifically quantify and justify the regulatory costs imposed on "small entity" non-registrants.

B. Continuation Data (Sec. 45.4): *How can the Commission ensure that timely, complete and accurate continuation data is reported to SDRs, and that such data tracks all relevant events in the life of a swap?*

Within each category of swaps in the “Other Commodity” swap asset class, the Commission should propose a specific list of continuation events and, for each such event, propose the required data elements for reporting continuation data in respect of such event.¹³ A technical conference should be held for each swap asset class/category-specific to enable the Commission to propose the types of relevant continuation events and, for each, the appropriate set of reportable data elements. Then the Commission should propose a rule or a rule amendment for public comment, conduct a cost-benefit analysis, and make a policy determination on the appropriate threshold of data granularity required to be collected and from what entities.¹⁴ The NFP Electric Associations recommend that the Commission *reduce*, not increase, the number of data elements it collects as swap transaction data in respect of “Other Commodity” swaps.

5. What processes and tools should reporting entities implement to ensure that required swap continuation data remains current and accurate?

6. Swaps should be linked when new swaps result from the assignment, netting, compression, clearing, novation, allocation, or option exercise of existing swaps (or other events wherein new swaps result from existing swaps).

- a. What is the most effective and efficient method for achieving this link (including information regarding the time of the relevant event)?
- b. How should reporting entities identify the reason why two swaps are linked (e.g., identify that swap A is linked to swaps B and C in an SDR or across multiple SDRs because swaps B and C arose from the clearing and novation of swap A)?
- c. Aside from those events set forth in part 45, are there other events that require linkage between related swap transactions?
- d. How should related swaps reported to different SDRs be linked?

¹³ The relevant continuation events may be different for each category of swaps. The Commission should begin its proposed amendments to data elements for continuation events with financial swap asset classes, and then review and propose amendments for categories of “Other Commodity” swaps.

¹⁴ This is particularly important in the context of energy commodity transactions, where the Commission’s “swap” transaction reporting rules currently collect data on nonfinancial commodity transactions for deferred shipment or delivery where the parties intend physical settlement, as a result of the ambiguous CFTC interpretations of what is, and is not, a “swap” in the Product Definitions Release. For energy and energy-related commodity swaps, the related cost-benefit analysis should include a SBREFA analysis to specifically quantify and justify the regulatory costs imposed on “small entities.”

i. Snapshot/State/Lifecycle Methods (Sec. 45.4)

7. What are the benefits and/or disadvantages of reporting continuation data using:
(i) The lifecycle reporting method; and (ii) the snapshot reporting method?

The following comments are only in respect of the difficulties, ambiguities and confusion surrounding non-registrants reporting swap creation data and swap continuation data (including valuation data) under the “lifecycle” reporting method.

- a. Are there events or information that can be represented more effectively using one of the reporting methods rather than the other?
- b. Should all SDRs be required to accept both the snapshot and lifecycle methods for reporting continuation data?

Under the current rules, continuation data (under the lifecycle method) such as exercise of an “option” (or an “embedded option or optionality” in a nonfinancial commodity transaction where the parties intend physical settlement) is captured differently by various reporting entities, registrants and non-registrants. Continuation events, and the data required to be reported for each, also differ under the reporting conventions of the current SDRs. For one SDR, valuation data is aggregated based on positions in an asset class or category of swaps; whereas for another SDR, valuation data is by transaction. One SDR’s system assigns valuation data as of the end of a quarter for reporting at a later date, whereas another SDR’s system may only be capable of assigning and reporting valuation data as of a single date. In addition, some reporting entities report option exercises or novations as continuation data, others as swap creation data for a “new” post-option exercise or novated swap.

See our general comment above under B. The Commission should propose via rule amendment the continuation events relevant in respect of each asset class/category of swaps, and provide a cost-benefit analysis for reporting and new or different data elements in respect of each.¹⁵ Allowing SDRs, reporting entities, registrants and non-registrants for various asset classes/categories of swaps each to make those decisions (sometimes with multiple entities collecting or reporting such data elements differently, all in good faith), will continue to result in

¹⁵ This is particularly important in the context of energy commodity transactions, where the CFTC’s “swap” reporting rules currently collect data on nonfinancial commodity transactions for deferred shipment or delivery where the parties intend physical settlement, as a result of the ambiguous CFTC interpretations of what is, and is not, a “swap.”

inconsistencies, duplication and errors in the SDR swap data reporting system.

ii. Valuation Data Reporting (Sec. Sec. 45.4(b), 45.4(c), and NALs 13-34 and 12-55)

8. How can valuation data most effectively be reported to SDRs to facilitate Commission oversight? How can valuation data most effectively be reported to SDRs (including specific data elements), and how can it be made available to the Commission by SDRs?

For cleared swaps, the “single best source” principle says that the DCO should provide valuation data to the SDR for each cleared swap. For all non-cleared swaps, the SDR itself should utilize publicly-available price sources (approved by the Commission) to calculate valuation data for all swaps in its system. This approach should ensure consistent valuation methods, rather than allowing or requiring each regulated entity, registrant or non-registrant to decide its own valuation method and use pricing sources available to it.

a. Should SDs and MSPs continue to be required by the swap data reporting rules to provide their own valuation data for cleared swaps to SDRs? If so, what are the benefits and challenges associated with this valuation reporting?

No. The single best source principle says that, for each cleared swap, a DCO should be the sole reporting entity. The DCO is the appropriate entity to provide valuation data, as it requires ongoing collateralization/margin that divorces the counterparty credit risk from “valuation” for the particular swap transaction. The SD/MSP that is party to the initial/alpha swap is no longer the single best source for either continuation data or valuation data for a cleared swap.

b. What challenges and benefits are associated with unregistered swap counterparties (both financial entities and non-financial entities) reporting valuation data for uncleared swaps to SDRs on a quarterly basis?

As the NFP Electric Associations requested in comments on the initial proposed swap data reporting rules,¹⁶ the Commission should identify the statutory authority and the regulatory policy justification for requiring non-registrants to report valuation data in respect of non-standardized swaps that are not executed on a

¹⁶ See See the comment letter filed February 7, 2011, at <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27624&SearchText> at page 21.

regulated entity, and that do not involve registered entities.¹⁷ For all cleared swaps, the DCO should report valuation data. For all non-cleared swaps, each SDR should utilize publicly-available price sources (approved by the Commission) to calculate valuation data for swaps in its system. If individual counterparties report valuation data, such reports will inevitably disclose confidential business methods and/or commercial operations information. The “valuation” of a particular swap to a commercial end-user can only be assessed relative to the commercial risks that the swap hedges (reflected in more or less sophisticated, more or less consistent, internal valuation methodologies).

iii. Events in the Life of a Swap (Sec. 45.4)

9. Please: (i) identify and (ii) describe the complete range of events that can occur in the life of a swap. Please also address whether, and if so how, reporting entities should report each such event.

- a. How should events in the life of a swap be represented in SDR data? For example, should an “event type” identifier, as well as a description of the specific event, be required?

See the general response to Section B and response to Q 7b above. The relevant “events in the life of a swap,” and the data elements necessary to report it, will be different for each swap asset class and for each category of swaps within the “Other Commodity” asset class. The structure of the market(s) for each type of swap is different.¹⁸

10. Can swap data reporting be enhanced so that the current state of a swap in an SDR (e.g., open, cancelled, terminated, or reached maturity) can be determined more efficiently and, if so, how?

- a. What role should SDRs play in auditing swaps data to help identify the current state of a swap?
- b. Should reporting entities and/or SDRs be required to take any actions upon the termination or maturity of a swap so that the swap's status is readily ascertainable and, if so what should those requirements be?

¹⁷ This is particularly important in the context of energy commodity transactions, where the Commission’s “swap” transaction reporting rules currently collect data on nonfinancial commodity transactions for deferred shipment or delivery where the parties intend physical settlement, as a result of the ambiguous CFTC interpretations of what is, and is not, a “swap” in the Product Definitions Release.

¹⁸ This is particularly important in the context of energy commodity transactions, where the Commission’s “swap” transaction reporting rules currently collect data on nonfinancial commodity transactions for deferred shipment or delivery where the parties intend physical settlement, as a result of the ambiguous CFTC interpretations of what is, and is not, a “swap” in the Product Definitions Release.

- c. Should swaps that are executed on or pursuant to the rules of a DCM or SEF, but which are not accepted for clearing and are therefore void ab initio, continue to be reported to and identified in SDR data? Why or why not? If so, how?
- i. should the swap data reporting rules be enhanced or further clarified to address void ab initio swaps?

A void ab initio swap is an inchoate or pending transaction that, if the swap is not cleared, is deemed never to have existed (“void ab initio”). There is no regulatory justification for reporting parties, or SEFs/DCMs, to report swaps which are intended to be submitted for immediate clearing. If a particular SEF or DCO wants to monitor such a transaction for its own internal (transitory) purposes or processes, that SEF/DCO can collect data in respect of such a transaction from its members.

The requirement that the DCO report data to the SDR (under the single best source principle) assures that the relevant data for the cleared swap reaches the SDR, once clearing occurs and as intended by the parties from the beginning. Requiring reporting parties and/or SEFs/DCMs, in addition to DCOs, to report (sometimes with multiple entities reporting the same swap based on their good faith understanding of conflicting rules, or interpreting data elements differently) will continue to result in inconsistencies, duplication and errors in the SDR swap data reporting system.

11. Should the Commission require periodic reconciliation between the data sets held by SDRs and those held by reporting entities?

iv. Change in Status of Reporting Counterparty (Sec. 45.8)

12. Commission regulation 45.8 establishes a process for determining which counterparty to a swap shall be the reporting counterparty. Taking into account statutory requirements, including the reporting hierarchy in CEA section 4r(a)(3), what challenges arise upon the occurrence of a change in a reporting counterparty's status, such as a change in the counterparty's registration status? In such circumstances, what regulatory approach best promotes uninterrupted and accurate reporting to an SDR?

[See comments in response to Q 28f.](#)

C. Transaction Types, Entities, and Workflows: *Can the Swap Data Reporting Rules be Clarified or Enhanced to Better Accommodate Certain Transactions and Workflows Present in the Swaps Market?*

13. Please describe all data transmission processes arising from the execution, confirmation, clearing, and termination of a swap, both cleared and uncleared. Please include in your response any processes arising from all relevant platforms and methods of execution.

14. Please identify any Commission rules outside of part 45 that impact swap data reporting pursuant to part 45. How do such other rules impact part 45 reporting?

There are many rules outside of Part 45 that contain swap data reporting obligations – these should be either moved into Part 45, or their provisions should be cross-referenced and made consistent with Part 45 requirements. As just one example, §50.50(a)(2) in the rules providing the end-user exception to clearing requires reporting transaction data about the entity electing the exception, either at the time the swap is executed or annually. Section 50.50(a)(2) states that “If there is more than one electing counterparty to a swap, the information specified in paragraph (b) of this section shall be provided with respect to each of the electing counterparties.” However, Exhibit D of Part 45 PET data accommodates only one party to make such election: “The identity of the counterparty electing the clearing requirement exception in CEA section (2)(h)(7)”.

The NFP Electric Associations have offered in the past, and offer again, to assist the Commission and the staff in reconciling the provisions of the swap recordkeeping and reporting rules (and other Commission rules implementing its jurisdiction over “swaps”) that affect non-registrants in the energy industry. The NFP Electric Associations recommend that the Commission reduce, not increase, the number of data elements it collects as swap transaction data in respect of “Other Commodity” swaps. When the Commission proposes amendments to its swap reporting rules, the Commission must also conduct a cost/benefit analysis of any amendment that changes or increases the reporting burden, taken as a whole, impacting non-registrants.¹⁹

Another example of swap reporting rules outside Part 45 is Interim Final Rule 32.3 in respect of commodity trade options, along with the requirements and conditions of Staff No-Action Letter 13-08, which together contain specific reporting requirements for commodity trade options. Each of these Commission actions was issued without prior notice and public comment,²⁰ and impose significant reporting burdens and costs

¹⁹ This is particularly important in the context of energy commodity transactions, where the Commission’s “swap” transaction reporting rules currently collect data on nonfinancial commodity transactions for deferred shipment or delivery where the parties intend physical settlement, as a result of the ambiguous CFTC interpretations of what is, and is not, a “swap” in the Product Definitions Release.

²⁰ The post-effective comment period for Interim Final Rule 32.3 expired prior to publication of the Product Definitions Release. Consequently, the Commission’s sequencing of its rulemakings made it impossible for the public to provide comments with an understanding of the breadth of transactions to which the Interim Final Rule would later apply, and in particular, with an understanding of the difficulties in distinguishing “commodity trade

without clearly articulated regulatory benefits. The NFP Electric Entities concur with the comments submitted by the Edison Electric Institute in response to this Question 14. The NFP Electric Associations submitted comments on Form TO in the Office of Management and Budget dockets (noted on Attachment C), and specifically request a SBREFA analysis with respect to such data collection activities.

15. What are the challenges presented to reporting entities and other submitters of data when transmitting large data submissions to an SDR? Please include the submission methods utilized and the technological and timing challenges presented.

Data reporting challenges vary by asset class, and by the various categories under the “Other Commodity” asset class. The challenges (and the costs and burdens of the Commission’s data collection activities) fall hardest on non-registrants for which financial market reporting is not a part of their core business operations.²¹

- i. Bespoke Transactions (Sec. 45.3, Appendix 1 to Part 45, and NALs 13-35, and 12-39)

16. Market participants have indicated that they face challenges electronically representing all required data elements for swap transactions because those elements have not yet been incorporated into standard industry representations (e.g., FpML, FIXML). In particular, various market participants have indicated that these challenges impact reporting to SDRs. What is the most efficient methodology or process to standardize the data elements of a bespoke, exotic or complex swap, to ensure that all required creation data is electronically represented when reported to the SDR? Do these challenges vary depending on the asset class? If so, how?

Data reporting challenges vary by asset class, and by the various categories under the “Other Commodity” asset class. The challenges (and the costs and burdens of the Commission’s data collection activities) fall hardest on non-registrants for which financial market reporting is not a part of their core business operations.²²

options” from other nonfinancial commodity transactions where the parties intend physical settlement, even under the reduced reporting requirements of Form TO.

²¹This is particularly important in the context of energy commodity transactions, where the Commission’s “swap” transaction reporting rules currently collect data on nonfinancial commodity transactions for deferred shipment or delivery where the parties intend physical settlement, as a result of the ambiguous CFTC interpretations of what is, and is not, a “swap” in the Product Definitions Release.

²² This is particularly important in the context of energy commodity transactions, where the Commission’s “swap” transaction reporting rules currently collect data on nonfinancial commodity transactions for deferred shipment or

ii. Allocations and Compressions (Sec. Sec. 45.3, 45.4, NALs 13-01 and 12-50)

17. Please describe any challenges associated with the reporting of allocations. How should allocation data elements (i.e., indications of whether swaps will be allocated, as well as the identities of entities to which portions of executed swaps are allocated) be reported to SDRs?

18. How should swaps resulting from compression exercises and risk mitigation services be reported to, and identified in, an SDR so that the Commission is able to effectively review these exercises and determine what swaps result from a specific exercise?

a. Please describe any technological, operational, or logistical challenges associated with reporting of such swap transactions.

iii. Prime Brokerage (NAL 12-53)

19. Please describe any challenges associated with the reporting of prime brokerage swap transactions (e.g., challenges related to transactions executed either bilaterally or on a platform and/or involving different asset classes)?

iv. Commodity Trade Options (NAL 13-08)

20. Under Commission regulation 32.3(b)(1), swap counterparties generally are required to report trade options pursuant to the reporting requirements of part 45 if, during the previous twelve months, they have become obligated to report under part 45 as the reporting counterparty in connection with any non-trade option swaps. Under Commission regulation 32.3(b)(2), trade options that are not otherwise required to be reported to an SDR under part 45 are required to be reported to the Commission by both counterparties to the transaction through an annual Form TO filing. Please describe any challenges associated with the reporting of commodity trade options, whether reported to an SDR or to the Commission on Form TO.

The NFP Electric Associations have provided substantial input to the Commission on the legal basis underlying their conclusion that “commodity trade options” are nonfinancial commodity transactions for deferred shipment or delivery where the parties intend physical settlement. “Commodity trade options” are excluded from the definition of “swap” under CEA 1a(47), added to the statute by Section 721 of the Dodd-Frank Act. The Commission is respectfully requested to respond to the NFP Electric Associations’ request for reconsideration of its statutory interpretation. See Section X of the comment letter, dated October 12, 2012, found at: <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59235&SearchText>

delivery where the parties intend physical settlement, as a result of the ambiguous CFTC interpretations of what is, and is not, a “swap” in the Product Definitions Release.

The NFP Electric Associations have described the challenges associated with reporting commodity trade options on Form TO, both to the Commission directly, and as part of the OMB process required before the Commission can collect data from the public. The Commission is respectfully requested to review such filings and respond. See <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59822&SearchText=> for the input identified as part of the Commission's Public Roundtable held on April 3, 2014.

If the Commission proposes to collect data on any category of nonfinancial commodity transactions other than "swaps" (including commodity trade options), the NFP Electric Associations respectfully request the Commission to first require such reporting only by regulated entities and registrants. Alternatively the Commission is respectfully requested to identify the statutory authority and the regulatory policy reason for collecting such data from non-registrants. The Commission should make a policy determination on the appropriate threshold of transaction data granularity, and reporting frequency, required to achieve an articulated and specific regulatory purpose. Finally, for energy commodity transactions, the related cost-benefit analysis should include a SBREFA analysis to specifically quantify and justify the regulatory costs imposed on non-registrants that are "small entities."

In order to identify which transactions to report on Form TO, and to make the necessary "aggregate value of exercise" calculations in respect of such transactions, energy industry non-registrants (including the NFP Electric Associations' members) spent significant resources in early 2014 determining whether they entered into any commodity trade options (or nonfinancial commodity transactions that the Commission might view as commodity trade options under its interpretations in the Product Definitions Release) during the relevant 2013 time period that would trigger a Form TO filing.²³ Thereafter, for each such transaction with a non-SD counterparty, it was necessary to verify that such counterparty had not yet reported such transaction under Part 45 (only "unreported" trade options are reportable on Form TO). For that universe of 2013 unreported trade options, each non-

²³ The NFP Electric Associations respectfully object to the Commission's conclusory statement in its Supporting Statement for New and Revised Information Collections, OMB control number 3038 that: "The Commission does not believe that an intricate knowledge of the Commodity Exchange Act or the agency's procedures, personnel, and implementing regulations is necessary in order to accurately prepare and submit a Form TO in approximately two hours to the Commission, as required under Regulation 32.3(b)(2) and explained in the instructions attached to the document." The Commission provides no support for its belief, which is directly contradictory to the input provided to the OMB process by energy industry commenters.

registrant had to determine the “value” of any “exercise” during the relevant 2013 time period. That determination was not straight-forward given the types of “option-like” pricing and other transaction provisions discussed in the Commission’s interpretations, which options or optionalities may or may not be “exercised” or “exercisable.” Energy industry non-registrants implemented detailed compliance processes and data validation regimes so as not to unintentionally submit inaccurate data to the Commission. Energy companies like the NFP Electric Associations’ members take regulatory compliance seriously, and are also aware of the potential for civil and criminal penalties for entities or individuals that make false or misleading statements to the Commission in any context.

Form TO requires an individual, not an entity, to certify that the information reported is “true and correct” (without a materiality or good faith qualifier). The potential for personal liability was viewed as significant under such an absolute standard, especially given that the Commission has repeatedly said that it is still considering the industry’s comments on the ambiguities in its interpretations, including those relative to embedded volumetric optionality.

- v. Swaps Executed or Cleared on or by FBOTs, No-Action CCPs, QMTFs, and Other Non-Registrants/Exempt Entities (Sec. Sec. 45.3, 45.4, 45.5, and NALs 14-27, 14-16, 14-07, 13-73, 13-43, 13-33, 12-63, and 12-56)

21. Are there instances in which requirements of CFTC regulations or reliance on exemptive or staff no-action relief result in more than one party reporting data to an SDR regarding a particular swap? If so, how should such duplicative reporting be addressed? What should be the role of the reporting entities, as well as other submitters of data, and SDRs in identifying and deleting duplicative reports? What solutions should be implemented to prevent such duplicative reporting?

See comments in the cover letter and in response to Q2 and Q3 above. The CFTC rules, interpretations, guidance and no-action letters should never result in multiple entities reporting data in respect of a single swap transaction at the same time. A “single best source” principle should clearly assign transaction reporting responsibility for each swap to one entity at a time. The Commission should limit reporting responsibility to regulated entities (DCOs, DCMs, SEFs) and registrants (SDs, MSPs). The Commission should also propose rule amendments by asset class, and by swap category within the “other commodity” asset class, and perform the required cost-benefit analysis in respect of the benefits and burdens of such reporting rules. Changes in the Commission’s data collection activities will impose costs on non-

registrants.²⁴ One example of the duplicative reporting requirements is when the reporting party to a bilateral swap reports the “execution” (for state law enforceability purposes) of such swap to its choice of SDR, a broker “executes” the party’s or parties’ order on a SEF, and the SEF reports a swap (to the SEF’s choice of SDR). Another example is when a non-registrant executes a Permitted Transaction (a bilateral, non-cleared swap) on a SEF, and both the SEF and the reporting party for the swap under report the bilateral swap to different SDRs.

22. In addition to those entities enumerated in Commission regulation 45.5, should other entities involved in swap transactions also be permitted to create unique swap identifiers (“USIs”)? If so, please describe those situations and the particular rationale for any such expansion of the USI-creation authority.

23. How should data reported to SDRs identify trading venues such as SEFs, DCMs, QMTFs, FBOTs, and any other venue?

vi. Inter-Affiliate Swaps (Sec. Sec. 45.3, 45.4, 45.6, and NAL 13-09)

24. In order to understand affiliate relationships and the combined positions of an affiliated group of companies, should reporting counterparties report and identify (and SDRs maintain) information regarding inter-affiliate relationships? Should that reporting be separate from, or in addition to, Level 2 reference data set forth in Commission regulation 45.6? If so, how?

The NFP Electric Associations recommend that the Commission *reduce*, not increase, the number of data elements it collects as swap transaction data in respect of “Other Commodity” swaps. Swap *transaction* data should *not* include reporting about entity characteristics or affiliations. The Commission should collect such data directly from the entities involved, through its registration process, or via direct regulation of entities.

vii. Reliance on No-Action Relief in General

25. To the extent that a reporting entity is, in reliance on effective no-action relief issued by Commission staff, reporting to an SDR in a time and/or manner that does not fully comply with the swap data reporting rules (e.g., outside reporting rules' timeframe, required data elements missing), how can the reporting entity most effectively indicate its reliance upon such no-action relief for each affected data element?

No-action letters are not binding on the Commission, and can be withdrawn, modified or superseded at any time. The

²⁴ For energy commodity derivatives, where there are more transactions between non-regulated entities, the cost-benefit analysis should include a SBREFA analysis to specifically quantify and justify the regulatory costs imposed by any proposed rule amendment on non-registrants that are “small entities.”

Commission staff has issued hundreds of no-action letters since different types of market participants began to comply with the Commission's swap regulations. Some have expired; others have been superseded or modified one or more times. Some have transaction conditions, others have conditions on the types of entities that can rely. The granular nature of such transaction data reporting would be extremely burdensome if a reporting entity or a registrant (much less a non-registrant) is required to report reliance on the Commission's hundreds of no-action letters, for each affected data element each time it enters into a swap.

The NFP Electric Associations respectfully request that the Commission conduct a cost/benefit analysis should it require any such reporting as part of its data collection activities.²⁵ The Commission should adopt a presumption that an entity that is entitled to rely on a Commission no-action letter is doing so. If the Commission has reasonable grounds to suspect a potential rule violation or inappropriate reliance on a no-action letter by a particular market participant, the Commission should request an explanation from the relevant entity.

- a. Are there any other challenges associated with the reliance on staff no-action relief with respect to compliance with part 45? If so, please describe them and explain how the swap data reporting rules should address those challenges.

There are substantial costs and challenges of relying on staff no-action relief in general with respect to compliance with Part 45. The staff has issued hundreds of such letters during the Dodd-Frank Act rulemakings, impacting rules, guidance, interpretations, filing requirements and compliance dates. The letters are not indexed or searchable or cross-referenced in any useable way. The time-limited nature of such letters, and the fact that such letters do not bind the Commission and can be withdrawn or amended at any time, means that the costs of reliance (much less the cost of reporting such reliance, much less reporting by affected data element) far outweigh any benefit.

Staff no-action letters cannot and should not replace the Commission's rulemaking process under the Administrative Procedures Act. Any proposed Commission rule or rule amendment that collects data about reliance on one or more Staff no-action letters as part of swap transaction reporting rules would

²⁵ For energy commodity derivatives, where there are more transactions between non-registrants, the cost-benefit analysis should include a SBREFA analysis to specifically quantify and justify the regulatory costs imposed on non-registrants that are "small entities."

impose significant costs on reporting parties and burdens on transaction execution.²⁶

In order to comply with the Commission's swap reporting rules, market participants must implement, test and maintain systems to report, establish and monitor interfaces with SDRs (which must themselves implement new fields, and test and maintain connections). Both market participants and SDRs must train personnel, plus the ongoing training necessary to keep up with the Staff's no-action process. It would be cost-prohibitive for non-registrants transacting with other non-registrants in the energy industry to report reliance on Staff no-action letters at either the macro or data element level.

viii. Post-Priced Swaps (Sec. Sec. 45.3 and 45.4)

26. Under the swap data reporting rules, are there any challenges presented by swaps for which the price, size, and/or other characteristics of the swap are determined by a hedging or agreed upon market observation period that may occur after the swap counterparties have agreed to the PET terms for a swap (including the pricing methodology)? If so, please describe those challenges.

ix. Complex Swap Transactions (NAL 14-12)

27. Please describe how swap transactions such as strategies and packages should be represented in swap data reporting such that it enables the Commission to effectively understand timing and the economics of the strategy or package and the component swap transactions?

The NFP Electric Associations recommend that the Commission reduce, not increase, the number of data elements it collects as swap transaction data in respect of "Other Commodity" swaps. If the Commission has questions about specific trading or commercial risk hedging strategies, or "packages" being used by market participants in a particular asset class of swaps or a specific category of "Other Commodity" swaps, the Commission should conduct a study or solicit data on a one-time basis. The Commission should not use its data collection activities under swap transaction reporting rules to educate the staff about how market participants may or may not structure transactions that may or may not involve one or more "swaps" in a particular asset class

²⁶ For energy commodity derivatives, where there are more transactions between non-registrants, the cost-benefit analysis should include a SBREFA analysis to specifically quantify and justify the regulatory costs imposed on non-registrants that are "small entities."

or category of swaps, or in a particular regional market for an “Other Commodity” category of swaps.²⁷

D. PET Data and Appendix 1 (Sec. 45.3 and Appendix 1): Monitoring the Primary Economic Terms of a Swap

Appendix 1 to part 45 sets forth a list of minimum PET terms for swap transactions within each of the five asset classes. Market participants have indicated that there are circumstances in which they face challenges in either the initial reporting of certain PET terms or the subsequent reporting of modifications to these terms. Market participants have also indicated that the data elements included in Appendix 1 may not sufficiently reflect all necessary economic terms for various swap transactions.

The NFP Electric Associations recommend that the Commission reduce, not increase, the number of data elements it collects as swap transaction data in respect of “Other Commodity” swaps.

28. Please describe any challenges (including technological, logistical or operational) associated with the reporting of required data fields, including, but not limited to:

- a. Cleared status;
- b. Collateralization;

The field values for data in respect of collateralization are vague and difficult to apply in the context of bilateral, non-cleared energy industry transactions, and under master agreements where swaps and other transactions are collateralized on a relationship basis, not on a swap-by-swap transaction basis. The NFP Electric Associations respectfully submit that these data fields do not provide the Commission with any useful information. It would be premature for the Commission to analyze what additional or different collateralization or margin data it needs to collect as part of swap transaction reporting rules until the margin and regulatory capital rules are finalized both by the Commission and by the prudential regulators with jurisdiction over some SDs.

- c. Execution timestamp;

“Execution” has a different meaning under the state contract laws that govern commercial transactions and bilateral swaps between two contract counterparties, and under the financial market regulations that establish regulated entities such as DCMs

²⁷ This is particularly important in the context of energy commodity transactions, where the Commission’s “swap” transaction reporting rules currently collect data on nonfinancial commodity transactions for deferred shipment or delivery where the parties intend physical settlement, as a result of the ambiguous CFTC interpretations of what is, and is not, a “swap” in the Product Definitions Release.

and SEFs, and regulate members and intermediaries that act in such regulated trading markets. In intermediated markets, “execution” time [in respect of customer orders] is important, for best execution, front-running safeguards and other customer protection reasons, and to establish a sequential audit trail of bids, offers, orders and transactions. Conversely, a non-cleared, off-facility swap is “executed”, and therefore binding, between two contract counterparties when a meeting of the minds occurs. Negotiation of a bilateral swap may take place over a day or a month, and agreeing what “execution time stamp” to apply serves no commercial purpose, and no identified regulatory purpose in a bilateral, principal to principal transaction. Such bilateral contract may be “submitted” to a SEF for “execution” on the SEF (whether submitted directly to the SEF by one of the counterparties that is a SEF participant, or submitted by an intermediary such as an introducing broker). But that swap will inevitably have two “execution” times – a state law “contract execution” time, and a “SEF regulatory execution” time. The Commission’s rules on this point are ambiguous at this time as applied to bilateral, non-cleared, and should be amended once the Commission articulates the regulatory reason for requiring collection of such data.

d. Notional value;

This data element is not reportable under Part 45 for an “Other Commodity” swap transaction. Nonetheless, the NFP Electric Associations appreciate the Commission’s recognition that not all swap asset classes, or categories within the “Other Commodity” asset class, calculate “notional value” in the same way or for the same purpose. This concept is particularly difficult to make uniform in the context of energy commodity transactions, where the CFTC’s “swap” reporting captures nonfinancial commodity transactions where the parties intend physical settlement due to the ambiguous CFTC interpretations of what is and is not a “swap,” including commodity trade options. Such nonfinancial commodity transactions cannot be analyzed using the financial commodity concept of “notional value” in most cases..

e. U.S. person status; and

The term “U.S. Person” is not defined for purposes of Parts 43 and 45; nor is it defined elsewhere in the Commission’s rules. The term is defined in the Commission’s cross-border guidance, where it expressly limits the definition to the guidance. U.S. Person is entity information that should not be reportable as a data element for swap transaction data. Nor should it be used to determine the reporting hierarchy for either Part 43 or Part 45 (the

rules are currently inconsistent on this point). The Commission should only use registration status with the Commission (which can be objectively verifiable) in its transaction reporting hierarchy.

- f. Registration status or categorization under the CEA (e.g., SD, MSP, financial entity).

Registration status with the Commission as an SD or MSP is objectively verifiable, and can be used to determine the reporting hierarchy.

“Financial entity” is not a registration category, and the term “financial entity” is not defined for purposes of Parts 43 and 45 (or in other rules that contain swap reporting obligations). Moreover, the statutory reference in Section 2(h)(7) and the CFTC interpretation of the statute is subject to an acknowledged and unresolved ambiguity. “Financial entity” is also entity information, not transaction-specific information -- each entity determines for itself whether it is, or is not, a “financial entity.” In a bilateral swap, where the regulatory ambiguity cannot be resolved between the parties, using the term in the reporting hierarchy is not useful or useable.²⁸ The parties to a swap transaction may analyze the same entity differently (all are acting in good faith) and failure to amend the rule will continue to result in inconsistencies, duplication and errors in the SDR swap data reporting system.

Except where the statutory hierarchy applies, the reporting party for a swap should be determined when the swap is executed, either for state law purposes when the bilateral contract is executed. If, during the life cycle of a bilateral swap between two non-registrants (which should not be reported at all at the time the transaction is executed), one counterparty registers with the Commission (for example, as a SD), that registrant should report all the unreported swaps to which it is a party at that time.

As was discussed at the Technical Conference on swap data reporting, the provisionally-registered SDRs interpret the Commission’s reporting hierarchy for “U.S. Persons” and “financial entities” differently, resulting in inconsistencies, duplication and errors in the SDR swap data reporting system. The NFP Electric Associations recommend that the Commission eliminate from its swap reporting rules all “categorizations” of entities other than those required by the statute (registration

²⁸ This is particularly important in the context of energy commodity transactions, where the CFTC’s “swap” reporting rules currently collect data on nonfinancial commodity transactions for deferred shipment or delivery where the parties intend physical settlement, as a result of the ambiguous CFTC interpretations of what is, and is not, a “swap.”

categories with the Commission). The NFP Electric Associations also request that a cost-benefit analysis be conducted for any swap data reporting required of/data collection by the Commission from non-registrants for uncleared swaps.

29. What additional data elements beyond the enumerated fields in Appendix 1 of part 45, if any, are needed to ensure full, complete, and accurate representation of swaps (both cleared and uncleared)? For example, other fields could include additional timestamps (for each lifecycle event, including clearing-related timestamps); clearing-related information (identity of futures commission merchant, clearing member, house vs. customer origin indication, mandatory clearing indicator, or indication of exception or exemption from clearing); and/or execution-specific terms (order type or executing broker). Responses should consider the full range of oversight functions performed by the Commission, including, but not limited to, financial surveillance; market surveillance; risk monitoring; and trade practice surveillance.

The NFP Electric Associations respectfully request the Commission to open a rulemaking to propose any collection of additional or different data elements beyond the enumerated fields in Appendix 1 of Part 45, the other data elements (some conflicting and overlapping) in Part 43, and those that appear elsewhere in the Commission's rules. The NFP Electric Associations recommend that the Commission *reduce*, not increase, the number of data elements it collects as swap transaction data in respect of "Other Commodity" swaps. The Commission should propose rule amendments to "harmonize" and clarify the data elements that it is collecting today before collecting (or proposing to collect) more and more granular data elements, imposing more and more burdens on regulated entities, registrants and non-registrants in its vague and unexplained search for "full, complete and accurate" data explaining all the diverse swap markets and commodity transactions that exist.²⁹

Between Part 43 and Part 45, there are 84+ data elements to be collected for each swap in the Other Commodity swap asset class for electric commodity "swap" transactions. In addition, in Exhibit D to Part 45 there is one data element that reads "Any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap," seems to require unlimited additional data elements. In Part 43, there is one data element that requires an: "Indication of other price affecting term." In Q14, the Commission acknowledges that there are data elements that appear

²⁹This is particularly important in the context of energy commodity transactions, where the Commission's "swap" transaction reporting rules currently collect data on nonfinancial commodity transactions for deferred shipment or delivery where the parties intend physical settlement, as a result of the ambiguous CFTC interpretations of what is, and is not, a "swap" in the Product Definitions Release.

elsewhere in the Commission's other rules, but that must be reported for each transaction, and within tight timeframes.

The Commission must articulate the regulatory purpose behind its data collection activity to justify the costs it is imposing on those from whom it is collecting the swap data. For each swap asset class and, within each category in the "Other Commodity" swap asset class, the Commission should consider a single and complete list of required data elements first, and then propose any additional data elements for consideration, with amended definitions as deemed necessary. The Commission should state with specificity the regulatory purpose served by collecting each such data element or group of elements.³⁰ Only then can the Commission make an informed policy determination on the appropriate threshold of granularity for swap data elements to be collected for that asset class/category, and from the regulated entities, registrants and non-registrants in that/those markets.

The Commission should not assume that market participants can or will continue to engage in swaps if required to report an unlimited number of data elements (within time constraints) to the SDR. The Commission must consider the costs and burdens of collecting such granular data (for standardized and non-standardized nonfinancial commodity transactions). The Commission should also consider on what types of market participants the costs and burdens will fall: regulated entities, registrants, and non-registrants.³¹

- a. Should the Commission require reporting of the identities, registration status, and roles of all parties involved in a swap transaction (e.g., special entity (as defined in Commission regulation 23.401(c)); executing broker; or voice/electronic systems)?

No. Entity information can be gleaned from other public sources available to the Commission, such as the Legal Entity Identifier system. For the swap reporting rules applicable to registrants (not regulated entities) and for all swap data collection/reporting rules applicable to non-registrants, the Commission should not pile on data element after data element. The Commission must both justify its specific regulatory need for

³⁰ This is particularly important in the context of energy commodity transactions, where the Commission's "swap" transaction reporting rules currently collect data on nonfinancial commodity transactions for deferred shipment or delivery where the parties intend physical settlement, as a result of the ambiguous CFTC interpretations of what is, and is not, a "swap" in the Product Definitions Release.

³¹ . For energy commodity derivatives, the cost-benefit analysis associated with the data collection should include a SBREFA analysis to specifically quantify and justify the regulatory costs imposed on "small entity" non-registrants.

adding or changing each such data element, and show that the information is not available to the Commission from another, more efficient, and less burdensome source. The identity or role of intermediaries registered with the Commission that may be involved in a particular swap transaction is not relevant to the parties to that swap transaction, and requiring reporting of that information as swap transaction data will increase the costs and delay important commercial risk hedging transactions.

- b. What, if any, additional fields would assist the Commission in obtaining a more complete picture of swaps executed on SEFs or DCMs (e.g., order entry time; request for quote (“RFQ”), or central limit order book (“CLOB”), or order book; request for cross, blocks, and other execution method indicators or broker identification)?
- c. Are there additional data elements that could help the Commission fulfill its oversight obligations, as described above?
- d. Should the fact that a swap is guaranteed be a required data element for SDR reporting? If so, what information regarding the guarantee should be reported to the SDR? What will be the challenges presented to the reporting party in capturing this information?

No. The NFP Electric Association respectfully request that the Commission publish for comment the release referenced in footnote 189 at p.48,226 of the Product Definitions Release before proposing additional reporting requirements for swaps that are guaranteed.³² The Commission should also take into account the information that is already reported to the SDRs as part of the annual or transaction-by-transaction election of the end-user exception to clearing or available to the Commission from other sources, such as the Legal Entity Identifier system.

There is no identified regulatory benefit to collecting data on the identities or roles of entities involved (e.g., financial entity, U.S. Person, special entity) as part of swap transaction data reporting, rather than as part of each entity’s own reporting obligations.³³ The time delays and documentation burdens on

³² This is particularly important in the context of energy commodity transactions, where the CFTC’s “swap” reporting rules currently collect data on nonfinancial commodity transactions for deferred shipment or delivery where the parties intend physical settlement, as a result of the ambiguous CFTC interpretations of what is, and is not, a “swap.”

³³ As the NFP Electric Associations recommended in comments on the proposed swap transaction reporting rules (see Attachment C), the Commission should receive “entity data” from each regulated entity or registrant itself, not as part of swap transaction data reporting.

parties entering into swap transactions bilaterally, and the costs of doing so, far outweigh any perceived benefits.³⁴

30. Have reporting entities been unable to report to an SDR terms or products that they believe are required under part 45 or related provisions? If so, please generally describe the data elements and/or products involved.

- a. Where a single swap has more than two counterparties, please comment on how such information should be provided within a single part 45 submission (i.e., one USI)?

31. Could the part 45 reporting requirements be modified to render a fuller and more complete schedule of the underlying exchange of payment flows reflected in a swap as agreed upon at the time of execution? If so, how could the requirements be modified to capture such a schedule?

32. Taking into account the European Union's reporting rules and Commission regulation 39.19, should the Commission require additional reporting of collateral information? If so, how should collateral be represented and reported? Should there be any differences between how collateral is reported for cleared and uncleared swaps?

For non-cleared swaps, collateral is posted between counterparties based on overall counterparty credit support relationships and not on a swap-by-swap, transaction-by-transaction basis. Due to this bilateral swap market structure, more granular data than what is reported under Rule 50.50(b)(1)(C) is simply not available as transaction data. Moreover, it is premature for the Commission to consider what additional collateralization or margin data it needs to collect until the margin and regulatory capital rules are finalized, both by the Commission and by the prudential regulators with jurisdiction over some SDs.

For cleared swaps, the DCO is the single best source for all collateralization or margin data relevant to cleared swaps. If the Commission proposes rules or rule amendments to collect similar data from other entities, such rules will continue to result in inconsistencies, duplication and errors in the SDR swap data reporting system. The NFP Electric Associations recommend that the Commission *reduce*, not increase, the number of data elements it collects as swap transaction data in respect of “Other Commodity” swaps.

³⁴ For energy commodity derivatives, where there are more transactions between non-regulated entities, the cost-benefit analysis should include a SBREFA analysis to specifically quantify and justify the regulatory costs imposed on non-registrants that are “small entities.”

E. Reporting of Cleared Swaps (Sec. Sec. 45.3, 45.4, 45.5, and 45.8): How Should the Swap Data Reporting Rules Address Cleared Swaps?

33. Part 45 requires the reporting of all swaps to SDRs. The Commission requests comment on how cleared swaps should be reported. Specifically:

- a. For swaps that are subject to the trade execution requirement in CEA section 2(h)(8), and ipso facto the clearing requirement, do commenters believe that the part 45 reporting requirements with respect to original swaps (alpha) should be modified or waived, given that the two new resulting swaps (beta and gamma) will also be reported?

See comments in response to Q2 and Q3. Swaps subject to the trade execution requirement (and therefore cleared) do not exist until cleared, at which time two swaps exist.

- b. For swaps that are subject to the clearing requirement, but not the trade execution requirement, do commenters believe that the part 45 reporting requirements with respect to alpha swaps should be modified or waived, given that the beta and gamma swaps will also be reported?

See comments in response to Q3. For bilateral, off-facility swaps that are cleared at a point in time after execution, the single best source of swap transaction data (upon clearing and thereafter) is the DCO. If an alpha swap is submitted for clearing, the submitting party should provide to the DCO the USI for that swap. Thereafter, the DCO should report the beta and gamma swap (to its choice of SDR), and should terminate/report the termination of the alpha swap to the SDR where the alpha swap was initially reported.

- c. For swaps that are not subject to the clearing requirement, but are intended for clearing at the time of execution, do commenters believe that the part 45 reporting requirements with respect to alpha swaps should be modified or waived, given that the beta and gamma swaps will also be reported?

See comments in response to Q3. There is no regulatory benefit identified for swap transaction data in respect of a “void ab initio” swap, until it is cleared.

- d. Please discuss whether in each of the circumstances described above there actually is an alpha swap.

If the alpha swap is “void ab initio,” it never existed. There was or “is” nothing to report, and no identified regulatory purpose for requiring such a report/collecting such data.

34. In addressing the questions posed in items 33 (a)-(d), commenters are also requested to address how any modifications to the reporting of cleared swaps would be consistent with the swap reporting requirement in CEA section 2(a)(13)(G) and the restrictions on CFTC exemptive authority in CEA section 4(c)(1)(A)(i)(I).

Section 2(a)(13)(G) has to do with real time reporting of swaps -- the title of the Section is "Public Availability of Swap Transaction Data." Clause (G) reads that "[e]ach swap (whether cleared or uncleared) shall be reported to a registered swap data repository." A "void ab initio" swap was or "is" deemed to have never existed – there is no identified regulatory purpose to report such an "inchoate" swap.

35. Can the existing rules be improved to more clearly represent how the clearing process impacts reporting obligations with respect to both the original swap (alpha) and the two new resulting swaps (beta and gamma)? If so, please explain.

See our comments in response to Q2 and Q3. Only one single best source of swap transaction data should have a regulatory reporting obligation in respect of any swap at any time. If the Commission requires other or multiple parties to also report swap transaction data in respect of that cleared/intended to be cleared swap, such a rule amendment will continue to result in inconsistencies, duplication and errors in the SDR swap data reporting system.

- a. Responses should address:
 - i. The reporting obligations applicable to alpha swaps;
 - ii. The reporting obligations applicable to beta and gamma swaps;
 - iii. Who holds the reporting obligation(s) for each swap;
 - iv. The reporting of the linkage of alpha, beta, and gamma swaps; and
 - v. Who has the legal right to determine the SDR to which data is reported?

The "single best source" should have the regulatory obligation to report transaction data to the SDR for a swap at any point in time. That entity should have the legal right to choose the SDR with which it interfaces. If that single best source is the DCO, then the DCO should choose the SDR. If the single best source is the DCM or the SEF (for Permitted Transactions), that regulated entity should have the choice. If a registrant has reporting party obligations for an off-facility, non-cleared swap, that registrant should choose.

Non-registrants do not have transaction-by-transaction reporting obligations in respect of non-registrant-to-non-registrant, non-cleared and non-standardized swaps. See the NFP Electric Associations comment letters on prior swap transaction reporting rules cited in Attachment C on this point. Section 4r(b) and (c) of the Commodity Exchange Act clearly provide the authority for the Commission to permit non-registrants to provide to the Commission only such written reports as the Commission may request regarding non-cleared swaps to which a non-registrant is a party.

If a non-registrant has periodic reporting obligations in respect of non-registrant-to-non-registrant swaps (or is requested by the Commission to file a special report), it should choose the SDR to which it will make such a report. Such reports should be required no more frequently than quarterly, and should collect a streamlined number of data elements, justified in a cost-benefit analysis by the Commission as not otherwise being available from public sources.

36. What steps should reporting entities and/or SDRs undertake to verify the absence of duplicate records across multiple SDRs for a single cleared swap transaction?

37. How should cleared swap data be represented in the SDR to facilitate the Commission's oversight of compliance with clearing-related rules, including the clearing requirement (Commission regulations 50.2 and 50.4) and straight-through processing requirements (Commission regulations 1.74, 23.506, 37.702(b), 38.601, and 39.12(b)(7))?

38. What reporting technique, term, or flag is recommended to identify a cleared swap?

i. CDS-Clearing Related Swaps and Open Offer (Part 45 and NALs 12-59, 13-36, and 13-86)

39. Swaps created by operation of a DCO's rules related to determining the end-of-day settlement prices for cleared credit default swaps ("CDS") are also known as "firm trades" or "clearing-related swaps" (see NAL 13-86). How should these swaps be reported pursuant to the swap data reporting rules?

40. Aside from "firm trades," some swaps may be created from "open offer," meaning there is no original swap between two counterparties, but only equal and opposite swaps between each of the counterparties and the clearinghouse. How should the swap data reporting rules address such swaps?

ii. DCO Reporting, Netting Processes, and Positions (Sec. Sec. 45.3 and 45.4)

41. As described above, DCOs provide position data to the Commission pursuant to part 39 and report transactions to SDRs pursuant to part 45. The Commission is aware of potential overlap in these data sets. With respect to such overlap, how can reporting of swaps data be made more efficient, while ensuring that the Commission continues to receive all data necessary to fulfill its regulatory responsibilities?

42. For cleared swaps, how can the netting and compression of swaps and positions by DCOs be most effectively represented?

- a. Please provide recommendations regarding the reporting of netting and compression, and describe any relevant differences in reporting of netting and of compression.
- b. Are netting and compression different concepts in the uncleared swaps markets versus the cleared swap market? If so, how?

F. Other SDR and Counterparty Obligations (Sec. Sec. 45.9, 45.13, 45.14): How Should SDRs and Reporting Entities Ensure That Complete and Accurate Information is Reported to, and Maintained by, SDRs?

43. The Commission requests comment that addresses whether reporting entities face challenges with respect to complete and accurate swap data reporting.

44. The Commission also requests comment regarding whether clarifications or enhancements to swap data reporting requirements, including requirements relating to the reporting of errors and omissions and requirements for data reconciliation across reporting entities, could facilitate accurate and complete reporting of data to the SDRs, as well as data maintained in the SDRs.

45. Should third-party service providers that report part 45 data to SDRs on behalf of reporting entities be required to register with the Commission?

No. There is no regulatory purpose for such registration. Rule 45.9 makes it clear that the reporting party remains responsible for the data reported to the SDR on its behalf. In fact, third party service providers require reimbursement and/or indemnification from their principal (the reporting party) for fees and expenses that the servicer incurs in providing such services. Consequently, the costs of registration for a third party service provider would be borne by the market participant, making third party service providers more expensive and less cost-effective for smaller market participants.

- i. Confirmation of Data Accuracy and Errors and Omissions (Sec. 45.14)

46. Commission regulation 49.11(b) requires SDRs to verify with both counterparties the accuracy of swaps data reported to an SDR pursuant to part 45. What specific, affirmative steps should SDRs take to verify the accuracy of data submitted? Please include in your response steps

that SDRs should take regarding data submitted by reporting counterparties on behalf of non-reporting counterparties who are not participants or users of the SDR.

Rule 49.11(b) should be amended to eliminate any inconsistencies with Part 45. The only entity with which an SDR should verify transaction data is the “single best source” that reported such swap transaction data to the SDR. The non-reporting party to such a swap has no regulatory obligation to verify such swap data under Part 45. Rule 45.14(b) requires the non-reporting party to notify the reporting party if it discovers an error or omission in swap data reported (by the reporting party) about a swap to which it is a party. The NFP Electric Associations note that the SDRs do not today proactively verify swap data with the non-reporting party to an off-facility, non-cleared swap. In fact, ICE Trade Vault does not allow a non-reporting party access to data about swaps to which such entity is a party, unless the entity pays ICE Trade Vault’s access fees that start at \$4,500 per year.

47. In what situations should an SDR reject part 45 data from entities due to errors or omissions in the data? How should the Commission balance legal requirements for reporting as soon as technologically practicable and the need for complete and accurate data?

48. All data in an SDR must be current and accurate, and the Commission expects SDRs, counterparties, and registered entities to take proactive steps to ensure data accuracy. Are there challenges that a reporting entity faces in confirming data accuracy? If so, how can those challenges most effectively be addressed?

Many of the NFP Electric Associations’ members have made a policy decision not to be the “reporting party/counterparty” for energy commodity swaps, whether or not those swaps are transacted with SDs or with other non-registrants. These NFP Electric Association members cannot afford to report swap transaction data to an SDR or to monitor transaction the accuracy of data reported to one or more SDRs by others.³⁵

For the vast majority of the NFP Electric Association members, they enter into very few swaps, and the cost of establishing, testing and maintaining an interface with an SDR is prohibitive for these not-for-profit entities. If the Commission imposes data accuracy/validation burdens on non-reporting parties, such members would likely choose not to enter into swaps, and

³⁵ This is particularly important in the context of energy commodity transactions, where the Commission’s “swap” transaction reporting rules currently collect data on nonfinancial commodity transactions for deferred shipment or delivery where the parties intend physical settlement, as a result of the ambiguous CFTC interpretations of what is, and is not, a “swap” in the Product Definitions Release. A non-reporting party, which may not agree with the reporting party’s determination that such transaction is a “swap” at all, cannot verify or correct transaction data that has been reported about that nonfinancial commodity transaction.

would take other steps to achieve their commercial risk management/hedging objectives, or would determine that such hedging was not cost-effective.

As noted in response to Q55, the NFP Electric Associations' members are effectively prevented from reviewing the accuracy of swap data (for swaps to which they are parties). ICE Trade Vault, the SDR to which many energy swaps are reported, does not make SDR swap data available to non-reporting parties unless the non-reporting party pays a minimum annual service fee of \$4,500 per party.

49. If an error or omission is discovered in the data reported to an SDR, what remedies and systems should be in place to correct the data? Within what time frame should a reporting entity be required to identify an error in previously reported data and submit corrected information to an SDR?

If the Commission proposes to amend the swap reporting rules for any swap asset class/category, or for any type of reporting entity or reporting party in a particular swap market, the Commission must consider the costs and benefits of imposing any additional or different reporting requirements, as well as any particular time frame for such reporting.

ii. SDR Required Data Standards (Sec. 45.13)

50. In addition to data harmonization, how can reporting entities and SDRs improve data quality and standardization across all data elements and asset classes within an SDR? Please provide examples of how the presentation of data may be standardized, utilizing specific data elements.

The Commission should prioritize any proposed amendments to its data collection activity via the transaction data reporting rules. The Commission should consult and develop workable and usable data collection processes for financial swap asset classes prior to beginning the process of proposing rule amendments for any category within the nonfinancial (or "other") asset class. In the interim, the Commission should suspend continued collection all transaction data related to the "Other Commodity" asset class until it resolves the pending questions about the definition of "swap," and should suspend collection of all unusable transaction data from non-registrants.

51. How should SDRs leverage the results of data elements harmonization to help ensure regulatory reporting is more accurate and consistent?

52. Are there additional existing swaps data standards (other than the legal entity identifier ("LEI"), unique product identifier ("UPI") and USI) that the Commission should

consider requiring as part of any effort to harmonize SDR data with both domestic and foreign regulators?

The NFP Electric Associations recommend that the Commission reduce, not increase, the number of data elements it collects as swap transaction data in respect of “Other Commodity” swaps.

iii. Identifiers (Sec. Sec. 45.5, 45.6 and 45.7)

53. Please explain your experiences and any challenges associated with obtaining and maintaining an LEI.

a. What additional steps can market participants and SDRs take to help ensure counterparties have valid LEIs?

The requirement to obtain an LEI, and the cost to maintain a valid LEI, is a barrier to entry for non-registrants. An LEI serves no purpose in relation to a non-registrant’s core commercial business. In addition, the costs are disproportionate to the number of swaps, and the purpose for entering into swaps (commercial risk hedging/trading/dealing) for a non-registrant. The same is true of SDR connection fees and DCM/SEF participation or “membership” fees.

If the Commission wants to facilitate (or even preserve the ability) of commercial end-users to hedge or mitigate commercial risks using swaps, the Commission should eliminate (or require regulated entities and registrants to subsidize) the cost of non-registrants obtaining and maintaining an LEI, in addition to eliminating other costs associated with the swap transaction reporting for non-registrants.³⁶

54. What principles should the Commission consider when designating a UPI and product classification system pursuant to Sec. 45.7?

a. Are there any commonly used taxonomies that the Commission should consider in connection with the designation process? Please respond by asset class.

55. Please explain your experiences and any challenges associated with the creation, transmission and reporting of USIs.

³⁶ This is particularly important in the context of energy commodity transactions, where the Commission’s “swap” transaction reporting rules currently collect data on nonfinancial commodity transactions for deferred shipment or delivery where the parties intend physical settlement, as a result of the ambiguous CFTC interpretations of what is, and is not, a “swap” in the Product Definitions Release.

ICE Trade Vault does not make USIs available to non-reporting parties as required of SDRs by §45.10(c)(3), which provides that the SDR “shall transmit the unique swap identifier created pursuant to §45.5 to both counterparties.” ICE Trade Vault allows non-reporting parties to access its system (to secure the USIs stored there) only if the non-reporting party pays a minimum annual service fee of \$4,500 per entity. Therefore, where the reporting party to a swap transaction chooses ICE Trade Vault as its SDR, non-reporting parties are effectively prevented from complying with obligations under §45.5 unless they make such payments to ICE Trade Vault.

G. Swap Dealer/Major Swap Participant Registration and Compliance: *How Can the Commission Enhance Part 45 to Facilitate Oversight of Swap Dealers and Major Swap Participants?*

56. Should the Commission require an SDR to aggregate the number of transactions by an entity, and the aggregate notional value of those transactions, to reflect the entity's total swap position and its total swap activity during a given period (e.g., for purposes of monitoring the SD de minimis calculation)?

57. Should data elements be reported to the SDR to reflect whether a swap is a dealing or non-dealing swap? If so, how should this information be reflected in the SDR?

58. Where transactions are executed in non-U.S. dollar (“USD”) denominations, should the SDR data reflect USD conversion information for the notional values, as calculated by the counterparty at the time of the transaction (rather than the conversion taking place at the SDR)?

a. If so, how should the SDR data reflect this information?

b. Would this answer be different depending on the registration status of the reporting counterparty (e.g., SD/MSP)?

H. Risk: How Can Part 45 Better Facilitate Risk Monitoring and Surveillance?

59. Should the Commission require SDRs to calculate market participants' positions in cleared and uncleared swaps?

a. Given the definition of “position” in part 49 of the Commission's regulations, and the transactional nature of swap data reporting, how should an SDR calculate the positions of market participants whose swaps are reported to it?

i. Please explain whether these calculations should differ by underlying instrument, index or reference entity, counterparty, asset class, long risk of underlying instrument, index, or reference entity, or short risk of the underlying instrument, index or reference entity, or any other attribute.

- b. How should SDR positions or position calculation methods relate, if at all, to positions calculated by DCOs and DCOs' position calculation methods?
60. Are there data elements that should be reported on a transaction basis to identify the linkage between a swap transaction and a reporting counterparty's other positions in products regulated by the Commission?
61. How can swap data reporting be enhanced to facilitate the calculation of positions within SDRs?
- a. How should position information within an individual SDR be aggregated across multiple SDRs so that the Commission has a complete view of a market participant's risk profile for swaps reportable under Dodd-Frank?
 - b. How can the Commission efficiently aggregate information by product and by market participant in order to understand positions across cleared and uncleared markets?
62. How can the Commission best aggregate data across multiple trade repositories (including registered SDRs)?
63. What international regulatory coordination would be necessary to facilitate such data aggregation?

I. Ownership of Swap Data and Transfer of Data Across SDRs

64. The Commission seeks input from market participants regarding the ownership of the transactional data resulting from a swap transaction. Is the swap transaction data from a particular swap transaction owned by the counterparties to the transaction?

Yes. Counterparties own all confidential information and trade secrets reflected in, or that might be derived from, transactional data about their bilateral swaps.³⁷ Even though certain data elements of certain swaps are made available to the public, the swap transaction data is still owned by the counterparties to the swap.

- a. If cleared, should a DCO have preferential ownership or intellectual property rights to the data?

The DCO is a party to a cleared swap (both the beta and gamma swaps, if an alpha swap is submitted for clearing after the time of execution), and acquires rights to the transaction data in respect of those swaps. Such rights are not “preferential” in any

³⁷ This is particularly important in the context of energy commodity transactions, where the CFTC’s “swap” reporting rules currently collect data on nonfinancial commodity transactions for deferred shipment or delivery where the parties intend physical settlement, as a result of the ambiguous CFTC interpretations of what is, and is not, a “swap.”

way to the rights of the counterparties to the alpha swap. Swap transaction data in respect of the alpha swap is still owned by the counterparties to that swap.

- b. Should ownership or intellectual property rights change based on whether the particular swap transaction is executed on a SEF or DCM?

A SEF or a DCM that is not a party to the swap, and is merely an execution platform, acquires no ownership or intellectual property rights in swaps that parties submit for execution. If a DCO is the party to a swap executed on the DCM or a Required Transaction on a SEF, the DCO acquires rights to the transaction data in respect of those swaps. Such rights are not “preferential” in any way to the rights of the holder of that SEF or DCM listed/DCO cleared swap contract.

- c. What would be the basis for property rights in the data for each of these scenarios?

- d. What ownership interests, if any, are held by third-party service providers?

None.

- e. What are the ownership interests of non-users/non-participants of an SDR whose information is reported to the SDR by a reporting counterparty or other reporting entity?

The party (the non-reporting party) to an off-facility, non-cleared swap retains a property right in the swap data reported to the SDR by its counterparty, the reporting party for regulatory purposes. That non-reporting party has data privacy as well as trade secret rights in that data, as recognized by Section 2(a)(13)(C) and (E) of the CEA. The SDR must protect the confidentiality of such data, or be liable to the counterparty (whether it is the reporting party or the non-reporting party to the swap) for any damages resulting from disclosure. Part 49 should be amended to acknowledge such ownership rights.

65. Is commercialization of swap transaction data consistent with the regulatory objective of transparency?

The NFP Electric Associations do not believe commercial use of swap transaction data is consistent with or in furtherance of the objectives of the Dodd-Frank Act regulation.

- a. In what circumstances should an SDR be permitted to commercialize the data required to be reported to it?

- b. Does commercialization of swap data increase potential data fragmentation?
- c. Is commercialization of swap data reported to an SDR, DCM or SEF necessary for any such entity to be economically viable? If so, what restraints or controls should be imposed on such commercialization?

66. Does the regulatory reporting of a swap transaction to an SDR implicitly or explicitly provide “consent” to further distribution or use of swap transaction data for commercial purpose by the SDR?

No.

67. Even though swap data reported to an SDR must be available for public real-time reporting, should any use of such real-time data or commercialization of such data occur only with the specific consent of the counterparties to the swap?

Yes, and for non-cleared swaps, only if specific consent has been provided by both swap counterparties. Once real-time reporting data has been publicly disseminated by the SDR, such data elements are available to the SDR and to the public for commercial or any other lawful use.

68. An ancillary issue relating to commercialization of data and legal property rights relates to the “portability” of SDR data. This issue relates to the operation of Commission regulation 45.10 (Reporting to a single SDR), which requires that all swap data for a given swap must be reported to a single SDR, specifically, the SDR to which creation data is first reported. The Commission did not, however, directly address whether the data in one SDR may be moved, transferred or “ported” to another SDR. The Commission seeks comment on whether Sec. 45.10 should be re-evaluated and whether a viable alternative exists. Should portability of data be permitted? If so, should there be agreement by the counterparties to a swap prior to the data being ported?

Commission Rule 45.10 should work if the Commission imposes swap transaction reporting obligations only on the “single best source” of data in respect of each swap at any point in time. The Commission should amend its reporting rules (to active voice) such that the rules place the transaction reporting burden clearly on only one reporting entity at a time for each swap. That entity should choose the SDR for that swap, and thereafter, that entity also should have the reporting burden. If the swap (whether executed on a SEF as a “Permitted Transaction,” or bilaterally) is later cleared, the “alpha” swap will be replaced by two swaps, and the DCO will report the two new swaps to the SDR of its choice. The DCO (or the SDR) should then also report termination of the alpha swap. If the single reporting entity for a swap wants to “port” data in respect of that swap to another SDR, it should be that reporting entity’s decision. This might happen if an SDR

changes its fee structure, or either the reporting party is changed by agreement of the parties or the swap is novated. In that case, the “new” SDR would issue a new USI, that would linked to the USI in the “old” SDR.

Within the construct of the Commission’s current swap transaction reporting rules, duplicative and conflicting reporting results from a requirement (or the passive voice expectation) that multiple parties required or permitted to report information about a single swap to “a single SDR.” Once a DCM, or a SEF for Permitted Transactions that are not required to be cleared, chooses a SDR (whether its affiliate or an unaffiliated SDR) without the approval of the reporting party, that SEF/DCM must assume all further reporting responsibility in respect of that swap. Otherwise, a decision by the SEF/DCM imposes immediate costs for the reporting party (registrants or, under the current rules, even non-registrants) in order to ensure compliance with rule 45.10. This rule creates a strong disincentive for market participants to execute swaps on DCMs or SEFs.

J. Additional Comment

69. To the extent not addressed by any of the questions above, please identify any challenges regarding: (i) The accurate reporting of swap transaction data; (ii) efficient access to swap transaction data; and (iii) effective analysis of swap transaction data. Please address each issue and challenge as it pertains to reporting entities, SDRs, and others. Please also discuss how such challenges can be resolved.

- a. What challenges do Commission registrants (SDs, MSPs, SEFs, DCMs, and DCOs) face as reporting entities and reporting counterparties under the swap data reporting rules? What enhancements or clarifications to the Commission's rules, if any, would help address these challenges?
- b. What challenges do financial entities face as reporting counterparties and non-reporting counterparties under the swap data reporting rules? What enhancements or clarifications to the Commission's rules, if any, would help address these challenges?

[See comments in response to Q. 28f.](#)

- c. What challenges do non-financial entities, including natural persons, face as reporting counterparties and non-reporting counterparties under the swap data reporting rules? What enhancements or clarifications to the Commission's rules, if any, would help address these challenges?

The Commission should provide no-action relief, or waive or suspend its rules requiring swap transaction reporting by non-registrants until the Commission resolves the pending questions about the definition of “swap,” proposes any necessary amendments to its rules applicable to “Other Commodity” swaps or energy and energy-related swap, and conducts a cost/benefit analysis in respect of any changed or increased collection of such transaction data in respect of non-standardized swaps from non-registrants.³⁸

³⁸ This is particularly important in the context of energy commodity transactions, where the CFTC’s “swap” transaction reporting rules currently collects data on nonfinancial commodity transactions for deferred shipment or delivery where the parties intend physical settlement, as a result of the ambiguous CFTC interpretations of what is, and is not, a “swap.” For energy commodity swaps, where there are more non-standardized, nonfinancial commodity transactions entered into off-facility between non-registrants (and where the swap/not-a-swap line is unclear), the cost-benefit analysis should include a SBREFA analysis to specifically quantify and justify the regulatory costs imposed on “small entity” non-registrants

**ATTACHMENT C – NFP ELECTRIC ASSOCIATIONS COMMENTS ON
SWAP RECORDKEEPING AND REPORTING RULES**

Interim Final Rule on Data Recordkeeping and Reporting	Oct. 14, 2010	75 Fed. Reg. 63,080	<p align="center">Nov. 15, 2010 (NFP Energy End Users) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=26390&SearchText=wasson</p> <p align="center">Nov, 15, 2010 (EEI) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=26394&SearchText=</p>
Pre-NOPR Comment - Data Recordkeeping and Reporting Task Force	-----	-----	<p align="center">Nov. 16, 2010 (NFP Electric) Link to Comment (PDF File) http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission17_122810-5.pdf</p>
Interim Final Rule re: Reporting Certain Post-Enactment Swap Transactions	Dec. 17, 2010	75 Fed. Reg. 78,892	<p align="center">Jan. 17, 2011 (NFP Electric) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27187&SearchText</p> <p align="center">Jan. 17, 2011 (EEI) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27158&SearchText=</p>
Swap Data Recordkeeping and Reporting Requirements	Dec. 8, 2010	75 Fed. Reg. 76,573	<p align="center">Feb. 7, 2011 (NFP Electric) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27624&SearchText</p> <p align="center">Feb. 7, 2011 (EEI/EP SA) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27575&SearchText=</p>

Real Time Public Reporting of Swap Transactions and Pricing Data	Dec. 7, 2010	75 Fed. Reg. 76,139 *CORRECTI ON 75 Fed. Reg. 76,930	Feb. 7, 2011 (NFP Electrics) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27623&SearchText= Feb. 7, 2011 (EEI/EP SA/AGA/NGSA) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27571&SearchText=
Registration and Regulation of Swap Data Repositories	Dec. 23, 2010	75 Fed. Reg. 80,898	Feb. 22, 2011 (NFP Electrics) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27919&SearchText=
Agency Information Collection Activities: Proposed Collection, Comment Request: Reporting Pre-Enactment Swap Transactions	Jan. 11, 2011	76 Fed. Reg. 1603	Mar. 14, 2011 (NFP Electrics) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=32279&SearchText=
Agency Information Collection Activities under OMB Review: Reporting of Pre-Enactment Swap Transactions	April 4, 2011	76 Fed. Reg. 18,536	May 4, 2011 (NFP Electrics) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=42333&SearchText=
Swap Data Recordkeeping and Reporting: Pre-Enactment and Transition Swaps ("Historical Swaps")	April 25, 2011	76 Fed. Reg. 22,833.	June 9, 2011 (NFP Electrics/EEI/EP SA) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=45702&SearchText=
Reopening and Extension of Comment Periods for Rulemakings Implementing the Dodd-Frank Act	May 4, 2011	76 Fed. Reg. 25,274	June 3, 2011 (NFP Electrics/EEI/EP SA) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=44667&SearchText=

Public Roundtable on End-User Issues	April 3, 2014		April 17, 2014 (NFP Electrics/EEI/EP SA) <a data-bbox="1015 296 1226 327" href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59822&SearchText=">Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59822&SearchText=
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