

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

**Procedures to Establish Appropriate Minimum Block Sizes for
Large Notional Off-Facility Swaps and Block Trades**

OMB CONTROL NUMBER 3038-0070

Justification

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

Section 727 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)¹ adds section 2(a)(13) to the Commodity Exchange Act (“CEA”),² which requires the Commodity Futures Trading Commission (“CFTC” or “Commission”) to establish certain standards for the real-time reporting of swap transaction data and the publication of the data relating to these reportable swap transactions.

On January 9, 2012, the Commission published final rules in the Federal Register implementing the provisions of CEA section 2(a)(13) (the “Adopting Release”).³ The Adopting Release codified those rules in part 43 of the Commission’s regulations. The Adopting Release did not, however, do two things. First, the Adopting Release did not establish criteria for determining what constitutes a large notional off-facility swap or block trade for particular markets and contracts pursuant CEA section 2(a)(13)(E)(ii). Block trades and large notional off-facility swaps are eligible to be subject to a time delay from the real-time public reporting requirement.

Second, the Commission deferred adopting certain requirements that provide additional protections against the unintended disclosure of the identities of swap counterparties and their business transactions and market positions as required under CEA sections 2(a)(13)(E)(i) and 2(a)(13)(C)(iii). In particular, these protections would mask the notional sizes of extraordinarily

¹ See Pub. L. 111-203, 124 Stat. 1376 (2010).

² 7 U.S.C. 1 et seq.

³ See 77 FR 1,182, Jan. 9, 2012.

large swap transactions, and the geographic detail of the underlying asset to an other commodity swap (e.g., a crude oil swap referencing Alaska Marine Terminal as its point of delivery).⁴

The instant final rule amends part 43 of the Commission's regulations by establishing criteria for determining what constitutes a large notional off-facility swap or block trade for particular markets and contracts pursuant to CEA section 2(a)(13)(E)(ii). The final rule establishes additional measures to protect the identities of swap counterparties and their business transactions and market positions as required under CEA sections 2(a)(13)(E)(i) and 2(a)(13)(C)(iii).

The Adopting Release included three collections of information requirements within the meaning of the Paperwork Reduction Act ("PRA"). The first collection of information requirement under part 43 imposed a reporting requirement on registered swap execution facilities ("SEFs") or designated contract markets ("DCMs") when a swap is executed on a trading facility or on the parties to a swap transaction when the swap is executed bilaterally. The second collection of information requirement under part 43 of the Commission's regulations created a public dissemination requirement on registered swap data repositories ("SDRs"). The third collection of information requirement created a recordkeeping requirement for SEFs, DCMs, SDRs and any reporting party (as such term is defined in part 43 of the Commission's regulations).

The final rule amends § 43.4 and § 43.6(g), and thus amends the first and second collections of information within the meaning of the PRA.

There are two amendments to § 43.4. The first amendment adds a new provision (§ 43.4(d)(4)(iii)), which develops a system to mask the exact geographic detail of the underlying assets to a swap in the other commodity asset class. Currently, there are several other commodity swaps that are not now reported under part 43 because the disclosure of data relating to these swaps may reveal the identities of the swap counterparties. Through the masking system, these swaps are now subject to real-time reporting under part 43.

The second amendment to § 43.4 changes the methodology through which the Commission establishes cap sizes. Section 43.4(h) of the Commission's regulations currently provides that cap sizes for swaps in each asset class shall equal the appropriate minimum block size corresponding to such publicly reportable swap transaction. If no appropriate minimum block size exists, then § 43.4(h) sets out specific interim cap sizes for each asset class. The final rule amends § 43.4(h) to establish new cap sizes in the post-initial period using a 75-percent notional amount calculation. Under this amendment, the Commission performs the calculation; however, SDRs would update their technology and other systems at a minimum of once per year

⁴ For a discussion of the other commodity asset class, as well as the other four asset classes, see Section II.C of the final rule.

to publicly disseminate swap transaction and pricing data with the cap sizes issued by the Commission.

Section 43.6(g) is an essential part of the final rule because it contains new provisions regarding the election to have a swap transaction treated as a block trade or large notional off-facility swap, as applicable. Essentially, section 43.6(g) permits swap counterparties to use an electronic mechanism to exercise such an election by notifying a SEF or DCM when a swap is executed on a trading facility, and an SDR when a swap is executed bilaterally.

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

With respect to the amendments to § 43.4, first, the general public would use and benefit from the public dissemination of the data related to other commodity swaps that are not currently reported under part 43 of the Commission's regulations. Second, SDRs would use the cap size data published by the Commission to mask the exact notional sizes of extraordinarily large swap transactions, which are currently masked by a static system of masking. That is, the final rule requires these SDRs to publicly disseminate swap transaction and pricing data using the dynamic cap sizes set by the Commission.

With respect to § 43.6(g), swap counterparties would use the data in order to exercise their election to treat their qualifying swap as a block trade or large notional off-facility swap.

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

All of the information collection requirements involve the use of certain electronic collection protocols such as email and the internet. All required submissions may be submitted electronically.

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

Prior to the adoption of the Dodd-Frank Act, the Commission did not have the authority to require the real-time reporting of swap data from market participants. The final rule would not

duplicate the requirements in the Adopting Release, but instead would supplement such requirements.

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

The Commission has established certain definitions of “small entities” to be used by the Commission in evaluating the impact of its regulations on such entities in accordance with the Regulatory Flexibility Act (“RFA”). The Commission has preliminarily determined in the RFA section that the amended collections in the final rule would not have a substantial effect on a significant number of small business or small entities. To the extent that any burdens are created on these businesses and entities, the Commission believes that they are minimal since the amendments are incremental to the existing requirements under part 43 of the Commission’s regulations.

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

Section 727 of the Dodd-Frank Act requires the Commission to establish certain standards for the real-time reporting of swap transaction data and the publication of the data relating to these reportable swap transactions. Section 727 and the Adopting Release require reporting parties to publish real-time swap transactions and pricing data to the general public. Without the frequency of reporting set forth in the Adopting Release as amended by the final rule, the Commission would not be able to adequately assess the swap markets and, more importantly, would fail to achieve the frequency of reporting and promotion of increased price discovery in the swaps market, both of which are mandated by the Dodd-Frank Act.

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

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

See response to Question 6.

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

CEA section 2(a)(13)(E)(ii) requires that the Commission establish criteria for determining what constitutes a large notional off-facility swap or block trade for particular markets and contracts. CEA sections 2(a)(13)(E)(i) and 2(a)(13)(C)(iii) require that the Commission protect the identities of swap counterparties and their business transactions and market positions in connection with the real-time public reporting of swap transaction and pricing data. The final rule seeks to accomplish the requirements set out in the sections described above, as required by the Dodd-Frank Act.

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

Respondents are not required to submit or publish more than the original data to an SDR, SEF, DCM or the public, as appropriate and applicable.

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

Under existing part 43, respondents are required to retain swap data for five years after the termination of a swap. The final rule would only increase that burden to the extent that additional swap transaction data is reported as a result of the amendment to § 43.4.

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

The regulations do not involve statistical surveys.

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

The regulations do not involve the use of statistical data.

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

This question does not apply. final rule does not require a pledge of confidentiality.

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

Section 8(a) of the CEA provides that, “unless specifically authorized in this Act, the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.” A number of narrow exceptions are set forth in Sections 8(b) and (e) of the CEA permitting the Commission to disclose “Section 8 material” for (i) prior public disclosures, (ii) congressional, administrative and/or judicial proceedings, (iii) other federal departments and agencies, individual states and foreign futures authorities, and (iv) registered entity investigations. In addition, part 43 of the Adopting Release prohibits the disclosure of the actual notional amount of a swap and the names of the parties to a swap transaction when publicly disseminating swap transaction and pricing data in real time.

The Commission also has adopted Freedom of Information Act regulations, 17 C.F.R. Part 145, which implements the federal statute set forth in 5 U.S.C. § 552, including exemptions to disclosure that permit a federal agency to withhold information prohibited from disclosure by another statute. See 5 U.S.C. § 552(b)(3) and Commission regulation § 145.5(c), 17 C.F.R. § 145(c).

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

The Commission affirmatively sought comment from the public on the proposed collection of information. No public comments were received affecting information burdens and justifications. A copy of the proposed rules was submitted to the Federal Register for publication and public comment.

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

The Commission affirmatively sought comment from the public and federal agencies on the information collection requirements set out in the Adopting Release. The final rule builds off of the comments received during that process. In addition, the final rule was published in the Federal Register seeking public comment on the amended collections.

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

As part of the rulemaking process with respect to real time reporting, the Commission has met with representatives of financial banking firms, risk analysts, attorneys, trade associations, and other regulators.

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

This question does not apply.

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

See the response to Question 7. Section 8(a) of the CEA generally prohibits the Commission from separately disclosing the “business transactions or market positions of any person and trade secrets or names of customers.” In addition, part 43 of the Adopting Release prohibits the disclosure of the actual notional amount of a swap and the names of the parties to a swap transaction when publicly disseminating swap transaction and pricing data in real time.

The Commission also has adopted Freedom of Information Act regulations, 17 C.F.R. Part 145 which implements the federal statute set forth in 5 U.S.C. §552, including exemptions to disclosure which permit a federal agency to withhold information prohibited from disclosure by another statute. See 5 U.S.C. § 552(b)(3) and Commission Regulation 145.5(c), 17 C.F.R. § 145(c).

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

The regulations covered by the collections do not require the giving of sensitive information, as that term is used in Question 11.

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

- **Indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than ten) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**

- **If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**

- **Provide estimates of annualized cost to respondents for the hours burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.**

See Attachment A.

13. **Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).**
 - **The cost estimate should be split into two components; (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major costs factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred.**

Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software, monitoring, sampling, drilling and testing equipment, and record storage facilities.

- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate, agencies may consult with a sample of respondents (fewer than ten), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**

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

See Attachment A.

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

The primary costs for reviewing and analyzing documents under the new information collections are the salaries and benefits of existing legal staff. However, there may be additional costs associated with the implementation and enforcement of the Section 727 of the Dodd-Frank Act such additional technology costs and new employee hires to assist in implementing and

enforcing Section 727 of the Dodd-Frank Act. These new costs include hiring and educating new staff and putting in place additional technology that will enable the Commission to set cap sizes. These additional costs (on top of the existing requirements under part 43 of the Commission's regulations) may vary between \$ 1,000,000 and \$ 5,000,000.

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

The program changes or adjustments are required by the Dodd-Frank Act.

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

This question does not apply.

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

This question does not apply.

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

No exceptions exist. This question does not apply.

Attachment A⁵

	Estimated # of Respondents Per Year (A)	Reports Annually By Each Respondent (B)	Total Annual Responses (C) (i.e., A x B)	Estimated Average Number of Hours Per Response (D)	Estimated Total Number of Hours of Annual Burden (E) (i.e., C x D)	Labor Costs per Hour (F)	Total Annual Burden Hour Costs (G) (i.e., E x F)
Amendment to 43.4(d)(4) requiring masking and public dissemination of certain other commodity swaps	5	10,000	50,000	1 minute (.0167 hours)	833 hours	\$140.93	\$117,395
Regulation 43.6(g)(1)(i) Swap Dealers/Major Swap Participants	125	1,000	125,000	1 minute (.0167 hours)	2,083.5 hours	\$140.93	\$293,628
Regulation 43.6(g)(1)(i) Non-Swap Dealers/Non-Major Swap Participants	1,000	5	5,000	1 minute (.0167 hours)	83.5 hours	\$140.93	\$11,768
Regulation 43.6(g)(2) Swap Dealers/Major Swap Participants	125	500	62,500	2 minutes (.0334 hours)	2,083 hours	\$140.93	\$293,557
Regulation 43.6(g)(2) Non-Swap Dealers/Non-	1,000	5	5,000	2 minutes	167 hours	\$140.93	\$23,535

⁵ The Adopting Release addresses hour burdens for Regulation 43.6(g)(1)(ii) for SEFs and DCMs.

Major Swap Participants				(.0334 hours)			
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Attachment B⁶

	Start-up Costs
Amendment to Regulation 43.4(h) and (d)(4)	\$75,900
Regulation 43.6(g)(1)(i) SDs/MSPs and Non-SDs/MSPs	\$11.2 million
Regulation 43.6(g)(1)(ii) SEFs/DCMs	\$577,460
Regulation 43.6(g)(2) SDs/MSPs and Non-SDs/MSPs	\$11.2 million

⁶ The Adopting Release addresses the operational and maintenance costs for Regulation 43.6(g). [See](#) 77 FR 1,232.