

**AMENDED AND RESTATED SUPPORTING STATEMENT FOR INFORMATION  
COLLECTIONS<sup>1</sup>**

Adaptation of Regulations to Incorporate Swaps

**OMB CONTROL NUMBER 3038-0090**

**Justification**

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

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act, Pub L. No. 111-203, 124 Stat. 1376 (2010)) amended the Commodity Exchange Act (CEA) to establish a comprehensive new statutory framework for swaps. These amendments required the Commodity Futures Trading Commission (“the Commission”) to amend several of its regulations to implement the new framework.

The information collection obligations imposed by the “Adaptation of Regulations to Incorporate Swaps” final regulations<sup>2</sup> are necessary to implement section 721 of the Dodd-Frank Act, which amended the definitions of futures commission merchant (“FCM”) and introducing broker (“IB”) to permit these intermediaries to trade swaps on behalf of customers. They also are necessary to implement section 733 of the Dodd-Frank Act which introduced swap execution facilities (“SEFs”) as a new trading platform for swaps. As a result of the enactment of sections 721 and 733, the Commission needed to amend certain recordkeeping regulations (1.31, 1.33, 1.35, 1.37, and 1.39) so that records of swap transactions are maintained analogously to how futures transactions are presently maintained.

The information collection burdens are restricted to the costs associated with the recordkeeping and reporting requirements that the Adaptation final regulations impose upon affected registrants, registered entities, and those registered entities’ members covered by the final rules.

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<sup>1</sup>The Commission is now amending the recordkeeping obligations set forth in Commission regulation 1.31 (the “Recordkeeping final rule”). The Recordkeeping final rule modernizes and makes technology neutral the form and manner in which regulatory records must be kept, as well as rationalizes the rule text for ease of understanding for those persons required to keep records pursuant to the Commodity Exchange Act and regulations promulgated by the Commission thereunder. The Recordkeeping final rule does not alter any existing requirements regarding the types of regulatory records to be inspected, produced, and maintained set forth in other Commission regulations. The proposal relating to the Recordkeeping final rule was published in the Federal Register on January 19, 2017 (82 FR 6356, Jan. 19, 2017) (the “2017 Recordkeeping Proposal”). As part of the recordkeeping Final Rule, the Commission is removing the existing audit system requirements in current Commission regulation 1.31 and currently included in this information collection. This supporting statement is being amended to reflect this removal. As a result of this removal, the start-up costs of this information collection are being reduced by \$35,350,000.

<sup>2</sup> Adaptation of Regulations to Incorporate Swaps, 77 FR 66288 (Nov. 2, 2012) (“Adaptation final regulations”).

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.**

Commission staff would use the information required to be preserved when conducting the Commission's examination and oversight program with respect to the affected registrants and when conducting investigations into potential violations of the CEA.

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.**

In general, to the extent the Adaptation final regulations address automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, persons covered by the final regulations already employ such techniques and/or technology. For example, because the rationale for allowing the existing entities (FCMs, IBs, commodity pool operators and commodity trading advisors) listed in regulation 1.4 to use electronic signatures (i.e., “[a]s part of [the Commission’s] ongoing efforts to facilitate the use of electronic technology and media”) applies equally to SDs and MSPs, final regulation 1.4 provides that an SD or MSP receiving an electronically signed document is in compliance with Commission regulations requiring signed documents, provided that the receiving SD or MSP generally accepts electronic signatures. Also, the Adaptation final regulations and the Recordkeeping final rule permit the use of electronic storage media.

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

The recordkeeping regulations amended in the Adaptation final regulations are the only recordkeeping regulations affecting FCMs and IBs. The information collected pursuant to the Adaptation final regulations is not collected by any other agency or available for public disclosure through any other source. To reduce duplicative recordkeeping, however, the Commission: (a) confirmed in the preamble of the Adaptation final regulations that reliance on a third party is appropriate where the records maintained by the third party duplicate the information otherwise required by regulation 1.35(a) to be kept by another party subject to the regulation; and (b) deleted Appendix C to Part 1 of its regulations because the procedures for bunched orders set forth therein also are set forth in regulation 1.35(a-1)(5) (re-designated as (b) (5)) and thus are duplicative and no longer necessary.

The Recordkeeping final rule does not require the collection of any additional information.

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.**

None.

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

Failure to maintain the records required by the Adaptation final regulations would adversely affect the Commission's ability to ensure the affected registrants' and their members' compliance with their obligations under the CEA and Commission regulations to document swap transactions. The Commission understands that recent advancements in technology, particularly with respect to capturing records and storing such records, will enable all affected entities to incorporate into their existing recordkeeping programs the enhanced requirements set forth in the final amendments.

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

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

This question does not apply. The Adaptation final regulations do not impose any more-than-quarterly reporting requirements to the agency.

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

This question does not apply.

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

This question does not apply. The Adaptation final regulations do not impose any requirements that would obligate a respondent to submit more than an original and two copies of any document.

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

As amended by the Adaptation final regulations and the Recordkeeping final rule, Commission regulation 1.31 requires entities to keep regulatory records, including regulatory records of any swap or related swap forward transaction, for more than three years.

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

This question does not apply. The final regulations do not require nor involve any statistical surveys.

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

This question does not apply. The final regulations do not require nor involve the use of any statistical data classification.

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

This question does not apply. The final regulations do not make a pledge of confidentiality, let alone an unsupported confidentiality pledge.

- **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.**

Final regulation 140.72 provides the Commission with the authority to disclose confidential information to SEFs and SDRs in order to effectuate the purposes of the CEA. The Commission has promulgated regulations to protect the confidentiality of any information collected from respondents. Such regulations are set forth in 17 CFR Part 145. Final regulation 145.9, as amended by the Adaptation final regulations, expands the definition of “submitter” by adding SEFs and SDRs to the list of registered entities to which a person’s confidential information has been submitted, and which, in turn, submit that information to the Commission. This amendment allows individuals who have submitted information to a SEF or SDR to request confidential treatment under regulation 145.9.

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

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

The Commission’s Adaptation proposal soliciting comments on this Collection was published in the Federal Register (76 FR 33066, June 7, 2011). The 2017 Recordkeeping Proposal soliciting comments was published in the Federal Register (82 FR 6356, Jan. 19, 2017). While the Commission did receive comments in response to the Adaptation proposal discussing burden estimates, those comments were particular to certain proposed changes to regulation 1.35(a) relating to the keeping of records of oral communications, which were to be addressed in a separate, final release. The Commission did not receive any comments on the 2017 Recordkeeping Proposal in regards to the Paperwork Reduction Act.

**Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.**

No such circumstances are anticipated.

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

This question does not apply. The Commission has neither considered nor made any payment or gift to a respondent.

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

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

More specifically, final regulation 145.9, as amended by the Adaptation final regulations, expands the definition of "submitter" by adding SEFs and SDRs to the list of registered entities to which a person's confidential information has been submitted, and which, in turn, submit that information to the Commission. This amendment allows individuals who have submitted information to a SEF or SDR to request confidential treatment under regulation 145.9.

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

This question does not apply. The final regulations do not request or require the provision 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.**

Requirement that futures commission merchants (“FCMs”) prepare swap confirmations and monthly statements describing customers’ swap positions (1.33)

Number of registrants: 141 FCMs.

Frequency of collection: As needed.

Estimated number of annual responses per registrant: 590 swap confirmations and 49 monthly statements.

Explanation:

2,016 hrs. of swap trading per yr. [252 trading days x 8 hrs./day] x 125<sup>3</sup> estimated swap dealers (“SDs”) = 252,000 total hrs. of swaps

Estimated that 1/3 of swaps will be cleared and therefore handled by FCMs = 83,160 hrs. of cleared swaps (i.e. 1/3 of the 252,000 total hrs. calculated above.)

83,160 hrs. / 141 FCMs = 590 hrs. per yr of swaps for *each* FCM

590 hrs. / 1 hr per swap = 590 swaps will be cleared by FCMs each year

590 swaps cleared by each FCM will yield:

**590 swap confirmations and 49 monthly statements** (590/12 mos.) to be completed by each FCM.

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<sup>3</sup> In connection with the notice of proposed rulemaking relating to the Adaptation final rulemaking, the Supporting Statement had estimated 250 SDs. However, today’s Supporting Statement is estimating 125 SDs because another recent Commission final rule estimated that number (See, Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for SDs and MSPs, 77FR 55904 (Sept. 11, 2012)).

Estimated aggregate number of annual responses: 590 x 141 FCMs = **83,190** aggregate swap confirmations and 49 x 141 FCMs = **6,909** aggregate monthly statements

Estimated annual hour burden per registrant: 1 hr. for each swap confirmation and 1 hr. for each monthly statement

Estimated aggregate annual hour burden: 1 hr. x 83,190 = **83,190** aggregate hrs. for swap confirmations and 1 hr x 6,909 = **6,909** aggregate hrs. for monthly statements

Estimated aggregate annual cost: See attachment.

Requirement that FCMs, IBs, and DCM members comply with Regulation 1.35 for any swap transactions they enter into:

This final regulation requires FCMs, IBs, and DCM members to comply with those transaction recordkeeping requirements, which they currently adhere to with respect to futures transactions, for swap transactions. As described in the Federal Register document, the Commission has estimated it will take each of the aforementioned entities approximately ½ hour to fulfill the recordkeeping requirement for each swap transaction.

As described above, it is estimated that each FCM will enter into 590 swaps per year, which would create an aggregate burden of 295 hrs. per year [590 / 2] for all 141 FCMs to comply with Regulation 1.35 in respect of swap transactions.

As proposed, the Commission cannot estimate how many IBs (there are 1,582 total IBs) and DCM members (11,500 DCM members in the aggregate) will enter into swaps. Whereas an FCM is required for a cleared swap to be cleared, it is not necessary that an IB be involved. In addition, an FCM typically will be a member of at least one DCM. Therefore, the 11,500 aggregate DCM members includes a significant number of FCMs. It is possible that a DCM member who is not an FCM may be involved in a cleared swap transaction, but the Commission cannot estimate the number.

Requirement that SEF members comply with Regulation 1.35 for any swap transactions they enter into:

The Commission estimates it will take a SEF member 8 hours per day to compile and maintain transactions records in compliance with Regulation 1.35's transaction recordkeeping requirements. While the Commission is able to estimate the number of swaps that will be cleared, the Commission cannot presently estimate the percentage of swaps that will be traded on SEFs as opposed to DCMs. In addition, certain SEF members may also be FCMs. Therefore, the Commission cannot reliably estimate the annual aggregate burden for SEF members to comply with Regulation 1.35. Nevertheless, because there are 252 trading days in the year, the Commission estimates

that SEF members will spend 2,016 hours per year (252 trading days x 8 hrs./day) to compile and maintain transactions records in compliance with Regulation 1.35's transaction recordkeeping requirements. Because the Commission has yet to publish final rules providing for the registration of SEFs, the Commission cannot currently estimate the number of SEFs that will register.

Requirement that each FCM, IB and DCM Member keep records showing a customer's name, address, occupation or business, and the name of any other person guaranteeing the account or exercising any trading control over it for each swap transaction entered into. (1.37(a))

This final amendment requires FCMs, IBs, and DCM members to comply with a recordkeeping requirement, which they currently adhere to with respect to futures transactions, for swap transactions. As described in the Federal Register document, the Commission has estimated it will take each of the aforementioned entities approximately .4 hours to fulfill this recordkeeping requirement for each swap transaction.

As described above, it is estimated that each FCM will enter into 590 swaps per year, which would create an aggregate burden of 236 hrs. per year [590 x .4] for all 141 FCMs to comply with Regulation 1.37(a) in respect of swap transactions.

As described above, and as proposed, the Commission cannot estimate how many IBs (1,582 total IBs) and DCM Members (11,500 DCM members in the aggregate) will enter into swaps. Whereas an FCM is required for a cleared swap to be cleared, it is not necessary that an IB be involved. In addition, an FCM typically will be a member of at least one DCM. Therefore, the 11,500 aggregate DCM members includes a significant number of FCMs. It is possible that a DCM member who is not an FCM may be involved in a cleared swap transaction, but the Commission cannot estimate the number.

Requirement that each FCM carrying an omnibus account for another FCM, a foreign broker, a member of a DCM or any other person maintain a daily record for such account of the total open long contracts and the total open short contracts in each swap. (1.37(b))

Final regulation 1.37(b) requires FCMs to comply with a recordkeeping requirement, which they currently adhere to with respect to futures transactions, for swap transactions. As described in the Federal Register document, the Commission has estimated it will take each FCM .4 hours to fulfill this recordkeeping requirement for each swap transaction.

The Commission cannot estimate the aggregate burden for this amendment because it is not known, and it cannot be reasonably estimated, *how many* swap transactions will involve an FCM carrying an omnibus account for another FCM, a foreign broker, DCM member, or any other person.

Requirement that swap execution facilities (“SEFs”) keep a record showing the true name, address, and principal occupation or business of any foreign trader executing transactions on the facility or exchange (1.37(c))

This final amendment requires SEFs to comply with a recordkeeping requirement currently applicable to DCMs. As described in the Federal Register document, the Commission has estimated it will take each SEF .4 hours to fulfill this recordkeeping requirement each time a foreign trader executes a transaction.

The Commission estimates that it would take each SEF \$19.03 per hour to comply with Regulation 1.37(c).

The Commission cannot estimate the aggregate burden for this amendment because it is not known, and it cannot be reasonably estimated, *how many* swap transactions will be executed on SEFs by foreign traders.

Requirement that SEFs record those buy- and sell-orders of different principals that SEF members have executed simultaneously (1.39)

This final amendment requires SEFs to comply with a recordkeeping requirement currently applicable to DCMs. As described in the Federal Register document, the Commission has estimated it will take each SEF .1 hours to capture the required information each time SEF members simultaneously execute buy and sell orders of different principals, and that storage costs will be less than \$1 per record.

The Commission cannot estimate the aggregate burden for this amendment because it is not known, and it cannot be reasonably estimated, *how many* buy and sell orders will be executed simultaneously on SEFs.

**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.

The are no start-up or operations and maintenance costs involved with this collection.

- 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.**

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

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

The program changes or adjustments are required by the Dodd-Frank Act, which established a new regulatory scheme. As part of Recordkeeping final rule amendments, the Commission is removing the existing audit system requirements in current Commission regulation 1.31 and currently included in this information collection. Also, the Commission is not adopting the requirement set forth in the proposing release that records entities establish written recordkeeping policies and procedures. As a result of this removal, the start-up costs of this information collection are being reduced by \$35,350,000.

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

Not applicable.

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

Not applicable.

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

None.

## Attachment A

### Amendments to Adapt CFTC Regulations to the Dodd-Frank Act: Regulation 1.33

*See also* responses to Questions 12 and 13, above.

### OMB Collection File 3038-0090

Requirement	Estimated Number of Registrants Per Year	Number of Responses Per Registrant Annually	Aggregate Number of Responses Annually	Estimated Average Number of Hours Per Response	Estimated Aggregate Burden	Estimated Aggregate Annual Cost Burden
<b>Recordkeeping:</b> 1.33 (preparation of swap confirmations and monthly statements describing customers' swap positions) (Third-party Disclosure)	141 futures commission merchants ("FCMs")	590 swap confirmations and 49 monthly statements <sup>4</sup>	83,190 swap confirmations and 6,909 monthly confirmations	1 hr. for each confirmation and 1 hr. for each monthly statement	83,190 hrs. for swap confirmations and 6,909 hrs. for monthly confirmations	\$80.90 for each FCM x 83,190 hrs. = \$6,730,071 annually for swap confirmations  \$80.90 for each FCM x 6,909 hrs. = \$558,938.01 annually for monthly confirmations

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<sup>4</sup> See response to question 12 for an explanation of these numbers.