

SUPPORTING STATEMENT FOR NEW AND
REVISED INFORMATION COLLECTIONS

Core Principles and Other Requirements for Swap Execution Facilities

OMB CONTROL NUMBER 3038-0074

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) added new section 5h to the Commodity Exchange Act (CEA) to impose requirements concerning the registration and operation of swap execution facilities (SEFs), which the Commission has incorporated in part 37 of its regulations.¹ The information collections under this Control Number are necessary for the Commission to evaluate whether SEFs, or entities applying to become SEFs, comply with the part 37 regulatory requirements.²

In September 2016, the Commission published a 30-Day Notice of Intent to Renew Collection 3038–0074 (30-Day Renewal Notice) and stated that 23 SEFs were registered with the Commission. However, since publication of the 30-Day Renewal Notice, the Commission has granted permanent registration to two additional SEFs, for a total of 25 registered SEFs. Therefore, the Commission is revising the collection burden for 3038-0074 to account for the increase in the number of registered SEFs. The increase in the

¹ In general, this OMB Control Number covers all information collections in part 37 of the Commission's regulations, including the information collections in Subpart A and the SEF core principles (*i.e.*, Subparts B and C). However, any information collections related to § 37.10 of the Commission's regulations are subject to a separate information collection with OMB control number 3038-0099 (Process for a Swap Execution Facility or Designated Contract Market to Make a Swap Available to Trade).

² Among other requirements, part 37 of the Commission's regulations imposes SEF registration requirements for a trading platform or system, obligates SEFs to provide transaction confirmations to swap counterparties, and requires SEFs to continually be in compliance with 15 enumerated core principles. The 15 core principles establish standards with respect to SEFs: enforcing rules; listing contracts for trading that are not readily susceptible to manipulation; monitoring trading to prevent market manipulation; obtaining information; adopting position limits or position accountability levels; adopting rules to enforce financial integrity of swaps transactions entered on or through the SEF; adopting rules to provide for the exercise of emergency authority, in consultation with the Commission; making public information regarding prices and volume on a timely basis; maintaining records of all activities of the business of the contract market in a form and manner acceptable to the Commission for five years; avoiding rules that result in unreasonable restraints of trade or anticompetitive burden on trading; enforcing rules to minimize conflicts of interest in its decision-making process; maintaining adequate financial resources; establishing system safeguards; and designating a chief compliance officer.

number of SEFs will increase the total information collection burden for registered SEFs in 3038-0074 from 23,000 hours to 25,000 hours and the total burden for the collection to 26,200 hours. (See Attachment A).

Additionally, in January 2018, the Commission adopted regulation 9.11(b)(3)(ii) requiring a designated contract market (DCM) or swap execution facility (SEF) (collectively, “exchange”) to include two additional elements in the disciplinary or access denial notice action provided to the National Futures Association (NFA). First, an exchange must include the type of product (as applicable) involved in the adverse action. Requiring an exchange to provide this information in the disciplinary or access denial notice will provide the Commission, market participants, the public, and other exchanges with greater transparency concerning where market abuses originate and whether the abuses are concentrated among certain product types. Second, an exchange must indicate in its notice of disciplinary or access denial actions whether the violation underlying the notice resulted in financial harm to any customers. This requirement codifies the clarification contained in an advisory previously issued by the Commission. The Commission believes that the inclusion of customer harm is essential because it cannot effectively perform its regulatory and oversight functions without knowledge of those instances in which brokers violate their fiduciary duty to customers by taking advantage of customer orders and engaging in fraudulent activity. The collection of information is mandatory. The Commission determined that the additional burden for an exchange to add the two additional elements in the contents of the disciplinary or access denial notice is de minimis and will not change the burden hours for the collection.

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

The information will be used and has been used by the Commission to determine whether SEFs, and applicants seeking registration as a SEF with the Commission, are in compliance with applicable core principles and all other part 37 requirements. This includes the new information required by the disciplinary and access denial notices pursuant to regulation 9.11(b)(3)(ii) that will assist the Commission in identifying the product involved in the adverse action and whether such action resulted in customer harm.

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 required submissions by SEFs to the Commission must be submitted electronically, including the access and disciplinary notice information. All required information to be provided to the public may be posted on the SEF's website.

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.

Information collected under this OMB Control Number, including the disciplinary and access denial information, is not already collected by the Commission for any other purpose, nor is it collected by any other agency, nor is the information available from any other source.

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 required information collected under this OMB Control Number does not involve any small businesses or other small entities.

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

This question is not applicable.

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

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

The final rules require respondents to report the disciplinary and access denial information to the NFA within 30 days of the adverse action.

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

In order for the Commission to adequately perform its statutory responsibility to determine whether SEFs, and applicants to become SEFs, are in compliance with the applicable core principles, a request for information may require the collection and presentation of information in fewer than 30 days depending on the exigency of the situation.

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

Respondents are not required to submit more than an original and two copies of any documents.

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

Commission Regulation 1.31 and Core Principle 10 (Recordkeeping) require that books and records required to be kept by the CEA or Commission regulations be retained for certain specified periods. Other than with respect to oral communications and records exclusively created and maintained on paper, the shortest of these periods is five years from the date of creation.

- 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 collection does not involve a statistical survey.

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

The collection does not involve the use of any 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

The collection does not involve any 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.

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.

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

response to these comments. Specifically address comments received on cost and hour burden.

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

The Commission published a notice in the Federal Register (83 FR 1609 (January 12, 2018)) soliciting comment on its determination that the information collection burden for 3038-0074 will increase as a result of the change in the number of SEFs registered with the Commission. The Commission also solicited comment in the same Federal Register notice on its determination that the information burden associated with the new filing requirements pursuant to regulation 9.11(b)(3)(ii) is de minimis. The Commission did not receive any comments.

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

No such circumstances are anticipated.

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

The question is not applicable.

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 beyond that provided by applicable law. 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.

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 this collection 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.

The Commission is revising the collection burden for 3038-0074 to account for the increase in the number of registered SEFs. The increase in the number of SEFs from 23 to 25 will increase the total information collection burden for registered SEFs from 23,000 hours to 25,000 hours (See Attachment A).³

Commission staff estimates that each respondent SEF expends up to \$56,000 annually based on an hourly rate⁴ of \$56 to comply with the regulations. This results in an

³ The Commission notes that there is an additional 1,200 burden hours for SEF registration applicants that have not been affected by this amendment. Therefore, the total burden for 3038-0074 is 26,200 hours.

⁴ In arriving at a wage rate for the hourly costs imposed, the Commission consulted the Management and Professional Earnings in the Securities Industry Report, published most recently in 2013 by the Securities Industry and Financial Markets Association (“SIFMA”). The wage rate is a composite (blended) wage rate arrived at by averaging the mean annual salaries of an Assistant/Associate General Counsel, an Assistant Compliance Director, a Senior Programmer, and a Senior Treasury/Cash Management Manager as published in the SIFMA Report and

aggregated cost for all respondent SEFs of \$1,400,000 per annum (25 respondent SEFs x \$56,000 = \$1,400,000). This also represents an increase of \$112,000 since the 30-Day Notice of Intent to Renew Collection 3038-0074 published in the Federal Register on September 23, 2016 (with two additional SEFs registered with the Commission since publication of that notice).

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.

It is expected that SEFs will utilize existing software, information technology, and systems. Thus, the Commission believes that there will not be additional capital/startup costs or operational/maintenance costs incurred by SEFs to report the information required by the final rule

dividing that figure by 2,000 annual work hours to arrive at the hourly rate of \$56. See Securities and Financial Markets Association, "Management & Professional Earnings in the Securities Industry 2013." In its original 3038-0074 submission, the Commission had used a blended rate of \$52 based on SIFMA's previous 2010 report.

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 rule 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 Commission is amending control number 3038-0074 to account for a change in the number of SEFs currently registered with the Commission from 23 to 25. The increase in the number of SEFs registered with the Commission will increase the total information collection burden for 3038-0074 from 23,000 hours to 25,000 hours (See Attachment A).

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.

**Part 37 Establishing Procedures for
Compliance with Core Principles and Other Requirements for SEFs and Applicants Seeking SEF
Registration⁵**

(Tables on following pages)

⁵ As noted above in footnote Error: Reference source not found, this OMB Control Number 3038-0074 covers all information collections in part 37 of the Commission's regulations, including the information collection in Subpart A and the SEF core principles (*i.e.*, Subparts B and C), other than the information collections related to § 37.10, which are covered separately under OMB Control Number 3038-0099.

Previous Table for Estimated Annual Burden Hours for Registered SEFs and Applicants for Permanent SEF Registration

Report	Estimated Number of Respondents	Reports Annually by Each	Total Annual Responses	Estimated Average Number of Hours per year	Annual Reporting & recordkeeping Burden Hours
Designation and Compliance (for registered SEFs)	23	NA	NA	437	10,051
Annual (for registered SEFs)	23	1	23	Included in average above	Included in average above
Quarterly (for registered SEFs)	23	4	92	Included in average above	Included in average above
Sub-Total	23	5	115	437	10,051
§ 37.6(b) Confirmation Requirement (for registered SEFs)	23	35,217	810,000	563	12,949
Total (for registered SEFs)	23	35,222	810,115	1000	23,000
Registration Process (for applicants for SEF registration)	4	1	4	300	1,200

Revised Table for Estimated Annual Burden Hours for Registered SEFs and Applicants for Permanent SEF Registration

Report	Estimated Number of Respondents⁶	Reports Annually by Each	Total Annual Responses	Estimated Average Number of Hours per year	Annual Reporting & recordkeeping Burden Hours
Designation and Compliance (for registered SEFs)	25	NA	NA	437	10,925
Annual (for registered SEFs)	25	1	25	Included in average above	Included in average above
Quarterly (for registered SEFs)	25	4	100	Included in average above	Included in average above
Sub-Total	25	5	125 ⁷	437	10,925

⁶ In the part 37 final rule release, the Commission estimated that there would be 35 SEFs. The Commission, however, notes that 25 SEFs are currently registered with the Commission.

⁷ The PRA analysis for the part 37 final rules initially estimated that each SEF would have 5 fixed annual reporting obligations (4 quarterly responses + 1 annual compliance report = 5 responses). Because the Commission is updating the number of SEF respondents to 25, the Commission notes that in the aggregate, all SEFs together provide annually 125 reports (5 responses x 25 SEFs = 125 responses).

§ 37.6(b) Confirmation Requirement⁸ (for registered SEFs)	25	35,217⁹	880,425¹⁰	563¹¹	14,075
Total (for registered SEFs)	25	35,222¹²	880,550¹³	1000	25,000¹⁴
Registration Process (for applicants for SEF registration)¹⁵	4¹⁶	1¹⁷	4	300	1,200¹⁸

⁸ The Commission notes that information collections resulting from § 37.6(b)'s requirement to provide counterparties with transaction confirmations and obtain copies of the applicable underlying swap agreements and documents is an existing component of a SEF's "Designation and Compliance" information obligations. However, for the sake of clarity, the Commission is including this requirement as a separate line item to allow the reader to understand more clearly the nature of a SEF's information collection obligations. By creating a separate line item, the Commission does not mean to imply that SEFs' information collection obligations under § 37.6(b) are new or not otherwise already part of the general Designation and Compliance obligations.

⁹ 880,425 total annual responses / 25 SEF respondents = 35,217 annual responses per SEF. See footnote Error: Reference source not found for the explanation regarding the calculation of 880,425 total annual responses.

¹⁰ In addition to the fixed reporting obligations referred to in the "Annual" and "Quarterly" rows, the Commission further notes that a SEF has additional reporting obligations that vary depending on the volume of transactions executed on the SEF, such as a SEF's obligation to provide swap confirmations to each counterparty. Based on industry data, the Commission estimates that from January 1, 2016 to May 31, 2016 approximately 168,000 (rounded amount) swap transactions were executed across all SEFs. Annualized, this means that the Commission expects approximately 405,000 swap transactions across all SEFs for 2016. To account for the two additional SEFs registered with the Commission since the 30-Day renewal in 2016, the Commission is increasing this estimate by 70,435 (rounded amount) swap transactions (2 x 35,217 = 70,434). Because each swap transaction requires a SEF to provide 2 responses (i.e., a SEF must provide a confirmation to both swap counterparties), the Commission estimates that in the aggregate SEFs will provide approximately 880,425 swap confirmations (440,212 swaps x 2 counterparties = 880,424 swap confirmations (which the Commission rounds to 880,425 for these purposes)).

¹¹ Based on its own observation as well as feedback from market participants, the Commission estimates that the process for a SEF to obtain, review, incorporate, and maintain the previously-negotiated agreements or documents, as well as to update such agreements or documents to reflect any applicable counterparty amendments, takes approximately 1.5 hour per SEF participant per year, and that on average a SEF has approximately 375 participants. Accordingly, 375 participants x 1.5 hours per participant = 562.5 estimated burden hours (which the Commission rounds to 563 hours for these purposes). The Commission also notes that this estimate of 563 burden hours includes the recordkeeping information collection burden estimate in connection with § 37.1001, which establishes a SEF's recordkeeping obligations.

¹² The Commission estimates that SEFs must provide approximately 880,550 total annual responses (125 fixed responses + 880,425 confirmations = 880,550). As a result, the Commission expects each SEF to provide an average of 35,222 responses (880,550 responses / 25 SEFs = 35,222 responses per SEF).

¹³ 125 fixed responses + 880,425 confirmations = 880,550 total annual responses.

¹⁴ 1000 average annual burden hours per respondent SEF x 25 registered SEFs = 25,000 total burden hours for all registered SEFs.

¹⁵ This estimate that applicants for permanent SEF registration incur approximately 300 burden hours does not represent a new information collection burden or adjustment. While the Commission did consider the burden hours related to the SEF application process in the original submission for this OMB Control Number, the Commission did not explicitly distinguish the burden hours related to the registration process for SEF applicants from the Commission's estimate of the on-going annual burden hours for

registered SEFs, but rather provided an aggregate number.

¹⁶ Based on the number of applicants that have applied for permanent SEF registration since the Commission first granted permanent registration status to SEFs on January 22, 2016, the Commission expects to receive 4 applications per year for permanent SEF registration.

¹⁷ For this purpose, the Commission considers the entire SEF application process to constitute a single information collection.

¹⁸ 300 average initial burden hours per respondent SEF x 4 anticipated SEF applicants = 1,200 total burden hours incurred for all anticipated SEF applicants. The Commission notes that the 1,200 burden hours for SEF registration applicants have not been affected by this amendment.