

**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 Commodity Futures Trading Commission (“**Commission**”) has incorporated in part 37 of its regulations as well as other parts of the Commission’s regulations.¹ The information collections under this Control Number are necessary for the

¹ In general, OMB Control Number 3038-0074 covers all information collections in part 37, including Subpart A and the SEF core principles (*i.e.*, Subparts B through P) as well as the related appendices thereto (*i.e.*, Appendix A—Form SEF, Appendix B—Guidance and Acceptable Practices, and proposed Appendix C—Guidance to Core Principle 3). The OMB control number also includes all information collections related to part 9 and proposed part 36, to the extent applicable to SEFs. Any information collections related to § 37.10 of the Commission’s regulations, however, 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”), which covers the information collections related to the “made available to trade” process for determining which swaps must be traded on a SEF (“**MAT process**”). Upon the Part 37 NPRM becoming a final rule, the Commission would eliminate OMB control number 3038-0099 and move the information collections related to SEFs into revised part 36 of the Commission’s regulations and create new information collections related to the MAT process under this OMB Control Number 3038-0074. This new MAT process information collection is reflected under the “Part 36 (MAT Process)” line item in Attachment A.

The Commission notes that its previous request for an extension of OMB control number 3038-0074 in 2016, the Commission stated in the renewal notice that OMB control number 3038-0074 “covers all information collections in part 37 of the Commission’s regulations, including Subpart A and the SEF core principles (*i.e.*, Subparts B and C) . . . [other than] any information collections related to § 37.10 . . .” The Commission notes that the reference to “Subparts B and C” should specify “Subparts B through P” instead. Agency Information Collection Activities Under OMB Review, 81 FR 65630, n.1 (Sep. 23, 2016) (“**2016 Part 37 PRA Renewal**”).

Commission to evaluate whether SEFs, or entities applying to become SEFs, comply with the CEA’s statutory core principle requirements and related Commission regulations in part 9, part 36, and part 37 of the Commission’s regulations.² Concurrently with the submission of this Supporting Statement, the Commission has published a notice of a proposed rulemaking in the Federal Register that is related to parts 9, 36, 37, 38, 39, and 43 of the Commission’s regulations (“**Part 37 NPRM**”).³ In the Part 37 NPRM, the Commission is proposing amendments to regulations relating to the trade execution requirement under the CEA and amendments to existing regulations relating to SEFs and designated contract markets (“**DCMs**”).⁴

The Commission believes that the changes—and related information collections—reflect the Commission’s enhanced knowledge and experience with swaps trading characteristics, and the Commission believes these changes are needed to further the Dodd-Frank Act’s twin statutory goals for SEFs to promote the trading of swaps on SEFs and to promote pre-trade price transparency in the swaps market.

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 CEA statutory core principles and all other part 9, part 36, and part 37 Commission regulatory requirements.

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 additional requirements 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.

³ The Commission is referring to these amendments as the “Part 37 NPRM” since the majority of the changes related to this OMB control number 3038-0074 will result from changes to part 37 of the Commission’s regulations compared to the number of proposed changes to the other parts.

⁴ The Commission would also make analogous changes to part 38 with respect to the MAT process for DCMs under OMB control number 3038-0052 and will submit a revised PRA estimate related thereto.

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, either via email or through an applicable Commission internet portal. 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 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. The Commission notes that it has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the Regulatory Flexibility Act.⁵ The Commission has also previously determined that SEFs are not small entities for the purpose of the Regulatory Flexibility Act.⁶

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.**

⁵ Policy Statement and Establishment of Definitions of "Small Entities" for Purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982).

⁶ Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476, 33548 (Jun. 4, 2013).

Less frequent information collections would impair the Commission's oversight ability and harm the Commission's stated mission to foster open, transparent, competitive, and financially sound markets.⁷

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 current rules require respondents to report the disciplinary and access denial information to the National Futures Association within 30 days of the adverse action. The proposed Part 37 NPRM would not change this requirement.⁸

- **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 and implementing regulations, 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:**

⁷ See CFTC Mission Statements, *available at* <https://www.cftc.gov/About/MissionResponsibilities/index.htm>

⁸ The Commission notes that in exigent situations, the Commission may request information from SEFs more often than quarterly as the Commission deems appropriate for the circumstances.

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.**

The Commission is providing this supporting statement concurrently with publication of the Part 37 NPRM in the Federal Register. The link to the Part 37 NPRM may be found on the Commission's website at: <https://www.cftc.gov/sites/default/files/2018-11/federalregister110518b.pdf>

- **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.**

With respect to the Part 37 NPRM, the Commission and staff have spent the past two years informally discussing various aspects of the proposed changes as well as learning more about SEFs' business models and the swaps markets. In addition, the Commission received additional public comments – many either directly or indirectly related to PRA obligations in part 37 under this OMB Control Number 3038-0074 – as part of the Commission's formal "Project KISS" initiative to apply the Commission's rules "in ways that are simpler, less burdensome and less of a drag on the American economy."⁹

- **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

⁹ CFTC Requests Public Input on Simplifying Rules, CFTC Release No. 7555-17 (May 3, 2017), available at <https://www.cftc.gov/PressRoom/PressReleases/pr7555-17>.

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.**

See Attachment A for more detailed discussion.

As it has done previously, the Commission notes that certain information collection obligations are imposed on (1) respondents related to the SEF registration process while other information collections are imposed on (2) registered SEFs operating in compliance with statutory and regulatory obligations.

As further described in Attachment A, the Commission estimates the following:

- **SEF registration process**

o Number of respondents:

- The Commission currently estimates that it receives approximately 4 respondent applicants for SEF registration each year, and the Commission does not believe that this estimate will change.
- The Commission estimates that as a result of the Commission’s revised application and interpretation of the category of entities that must register as SEFs, approximately 60 total entities will be required to apply as SEFs under the Part 37 NPRM pursuant to the CEA’s SEF registration requirement. The Part 37 NPRM, however would permit these entities to request a delay to the registration requirement of varying amounts of time depending on the type of entity (i.e., domestic or foreign). As a result, the Commission estimates that 60 entities will apply for a delay in the registration requirement. Eventually, the Commission believes that these 60 entities will need to register as SEFs. Accordingly, the purpose of this Supporting Statement and the tables in Attachment A, the Commission is accounting for these 60 entities under a new row (“Request to Delay Registration Requirement”) that separately identifies these 60 entities from the Commission’s current estimate of 4 annual SEF applicants. For purposes of the table in Attachment A, this new row will list 20 respondents requesting a delay from the Commission for the registration requirement (60 total new respondents that will request a delay in the registration requirement annualized over 3 years = 20 such respondents per year). However, the Commission eventually expects all such 60 entities to apply to register as SEFs, and the Commission will submit revised estimates if needed.

o Burden hours:

- For SEF applicants in general, the burden hours would decrease from the current estimate of 300 hours to 295 hours due to eliminating unnecessary exhibits from Form SEF, which applicants for SEF registration must file as part of the application process.
- The Commission estimates that the voluntary information collection related to the 60 new entities described above to delay their registration requirement would impose a one-time reporting burden of 1 burden hour per entity for a total of 60 burden hours across all such entities (60 entities x 1 burden hour = 60 total burden hours). As noted above, the Commission is annualizing these 60 entities over three years to estimate 20 entities per year (60 total new entities / 3 years = 20 entities per year). This voluntary information collection would not apply to the 4 annual applicants included in the Commission’s current estimate.
- Although the burden hours per SEF applicant will decrease, the total burden hours across all respondents related to SEF registration will not change from the current annual estimate of 1,200 burden hours since the new, one-time voluntary information collection related to the additional entities described above requesting a delay in the application of the registration requirement will offset this decrease.¹⁰

• **Registered SEFs**

o Number of respondents:

¹⁰ 4 applicants per year applying for SEF registration x 295 burden hours = 1,180 burden hours. The additional 20 burden hours per year related to the one-time request for a delay in the registration process equals 1,200 total burden hours (1,180 + 20 = 1,200 total annual burden hours).

- The Commission notes that there are currently 25 registered SEFs. As discussed above, the Commission believes that eventually the number of registered SEFs will increase from the existing 25 registered SEFs to include the additional 85 registered SEFs as a result of the Commission's proposed application of the CEA's SEF registration requirement (25 currently registered SEFs + 60 entities identified above = 85 registered SEFs). As noted above, however, the Commission anticipates that all 60 new entities will request a delay under the Part 37 NPRM to becoming registered SEFs. Accordingly, for the purpose of this Supporting Statement and the number of registered SEF respondents reflected in Attachment A, the Commission estimates that there will be 45 registered SEFs in the 3-year period covered per year by this OMB Control Number 3038-0074 (25 currently registered SEFs + 20 new SEFs = 45 SEFs). Eventually, the Commission expects the number of total registered SEFs to increase and will submit revised estimates if needed.

o Burden hours:

- The Commission proposes to both add and eliminate information collections burdens for registered SEFs. The Commission estimates on a net basis that the total burden hours imposed on each SEF will be reduced from 1,000 hours to 407 hours per SEF.¹¹
- Even though the total number of registered SEFs will increase, the total burden hours across all registered SEFs will decrease from 25,000 hours to 18,325 due to the decrease in the amount of burden hours imposed on each SEF.¹²

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**

¹¹ The Commission notes that it would create a new information collection that would require a SEF to file a notification with the Commission involving the direct *or indirect* transfer of 50% or more equity interest of the SEF (*e.g.*, the 50% acquisition of the SEF's holding company) under proposed § 37.5(c) and would impose 10 additional burden hours. Unlike most of the information collections that apply to all respondent SEFs, the Commission estimates that this proposed new information collection would apply to only a single SEF. Based on its experience, the Commission estimates that this change will affect 1 SEF. As a result, while the Commission estimates that most SEFs will incur 407 burden hours, 1 SEF will incur an additional 10 burden hours for a total of 417 burden hours (407 + 10 = 417).

¹² 45 SEFs x 407 burden hours = 18,315 burden hours. As noted in the above footnote, one SEF will incur an additional 10 burden hours. Accordingly, 18,315 burden hours + 10 burden hours = 18,325 total burden hours across all registered SEFs.

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 new 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 proposed rule. For example, all of the 60 entities subject to the Commission's proposed interpretation and application of the SEF registration requirement are already operational platforms that are registered either as interdealer brokers with the National Futures Association or registered in some corresponding capacity with an international regulator.

- 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.**

While the number of registered SEFs is expected to increase under the Commission's proposed interpretation and application of the SEF registration requirement, the Commission does not anticipate that it will require additional government employees to review the additional SEFs due to the increased experience and efficiency of the relevant Commission staff. The Commission notes, however, an increase

in the average wage rate of those employees from \$97.50, as estimated under the 2016 Part 37 PRA Renewal, to \$148.16 per hour.¹³ Accordingly, the total cost to the government will be \$237,056.¹⁴

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

The costs to the government will increase since, based on an updated 2017 Commission pay scale, Commission staff's salaries and benefits have increased across the board.

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.

¹³ The Commission estimated in its supporting statement for the 2016 Part 37 PRA Renewal a cost to the government of "\$156,000 annually based on ten full time equivalents reviewing for 20 days at 8 hours per day (1,600 hours) at an average total compensation of about \$97.50 per hour." In arriving at a wage rate for the 2016 hourly costs imposed in the 2016 Part 37 PRA Renewal, Commission staff used a composite (blended) rate of Commission salaries (in the Washington, D.C. locality) for economists (Grade 11-13) and attorneys (Grade 11-14) in the Division of Market Oversight and divided that figure by 2000 annual working hours to arrive at the hourly rate of \$60, multiplied by 1.625 to account for overhead and benefits.

For the purposes of this revision, the Commission will use updated wage rates for 2017 and apply a more simplified approach by taking the blended rate of salaries for (i) non-managerial lawyers and economists at Grade 14 and (ii) managerial lawyers and economists at Grade 15, multiplied by 1.625 to account for overhead and benefits.

¹⁴ As described in the footnote immediately above, \$148.16 (revised wages and associated benefits) x 1,600 hours = \$237,056.

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.

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Attachment A includes both (1) a discussion of the Commission’s general assumption and methodology in determining its information collection estimates and (2) tables listing the individual information collection estimates and related burdens for both respondent SEFs and applicants for SEF registration.

General Assumptions and Methodology**Scope and Applicability of Information Collections**

As discussed in footnote 1 above, OMB Control Number 3038-0074 covers all information collections in part 37, including Subpart A and the SEF core principles (*i.e.*, Subparts B through P) as well as the related appendices thereto (*i.e.*, Appendix A—Form SEF, Appendix B—Guidance and Acceptable Practices, and proposed Appendix C—Guidance to Core Principle 3).¹⁵ The OMB control number also includes all information collections related to part 9 and proposed part 36 to the extent applicable to SEFs.

For clarity, existing § 37.10(a), which covers the information collections related to the “made available to trade” process (“**MAT process**”), is not covered under this OMB control number, but rather is subject to a separate information collection under OMB control number 3038-0099.¹⁶ Upon the Part 37 NPRM becoming a final rule, the Commission would eliminate OMB control number 3038-0099 and move the information collections related to SEFs to revised part 36 of the Commission’s regulations and create new information collections related to the MAT process under this OMB Control Number 3038-0074.¹⁷ This new MAT process information collection is reflected under the “Part 36 (MAT Process)” line item in the reporting table below for registered SEFs. The Part 37 NPRM would eliminate the MAT process for SEFs and DCMs and establish a new approach based on a revised interpretation of the trade execution requirement in CEA section 2(h)(8). The trade execution requirement would apply to swaps that are both (i) subject to the clearing requirement and (ii) listed by a SEF or DCM for trading. Based on this approach, a number of new interest rate swaps and credit default swaps would be subject to the trade execution requirement. The proposed MAT process under proposed part 36 of the Commission’s regulations would impose a reporting information collection since each SEF would be required to submit to the Commission new Form TER that identifies any swap that the SEF lists for trading that also is, or becomes, subject to the CEA’s clearing requirement under section 2(h)(1) of the CEA.

¹⁵ The Commission notes that in its previous request for an extension of OMB control number 3038-0074 in 2016, the Commission stated in the renewal notice that OMB control number 3038-0074 “covers all information collections in part 37 of the Commission’s regulations, including Subpart A and the SEF core principles (*i.e.*, Subparts B and C) . . . [other than] any information collections related to § 37.10 . . .” The Commission notes that the reference to “Subparts B and C” should specify “Subparts B through P” instead. Agency Information Collection Activities Under OMB Review, 81 FR 65630, n.1 (Sep. 23, 2016).

¹⁶ 78 FR 33606 (Jun. 4, 2013) (“Process for a Swap Execution Facility or Designated Contract Market to Make a Swap Available to Trade”).

¹⁷ The Part 37 NPRM would be a “notice of proposed rulemaking” rather than a final rule.

Estimated Number of Respondents

1. SEF registration process: The Commission estimates that it will continue to receive 4 applicants per year for SEF registration. Additionally, as discussed above, the Commission also expects to receive requests to delay the registration requirement from an additional 60 total new entities as a result of the Commission's proposed application and interpretation of the CEA's SEF registration requirement, as promulgated in § 37.3 of the Commission's regulations.¹⁸ The Commission notes that the 60 new entities and their related requests for a delay of the registration requirement would be on a one-time basis due to the Part 37 NPRM's proposed changes related to the Commission's interpretation of the CEA's registration requirement (although the Commission expects that these 60 entities will eventually in the future apply for SEF registration and become registered SEFs). The Commission is annualizing these 60 new entities across the three years covered by this OMB Control Number 3038-00074 so that the table below ("Burdens: SEF Registration") will list 20 entities per year (60 entities / 3 years = 20 entities per year), although the Commission notes that it expects all 60 entities to request a delay in the registration requirement within the first year.

2. Registered SEFs: The Commission notes that there are currently 25 registered SEFs. As discussed above, the Commission expects that an additional 60 entities will eventually register as SEFs based on the Commission's proposed interpretation and application of the CEA's SEF registration requirement, as promulgated in § 37.3 of the Commission's regulations. The Commission also estimates, however, that these 60 entities will request a delay in the application to the revised SEF registration requirement and will be eligible for such a delay for a varying amount of time depending on the type of entity (*i.e.*, domestic vs. foreign). Accordingly, the Commission generally expects that the number of respondents for information collections associated with registered SEFs will generally increase by 20 entities, for a total of 45 total respondents per year during the 3-year period covered by this OMB Control Number 3038-0074 (25 currently-registered SEFs + 20 newly-registered SEFs = 45 total SEFs), unless otherwise noted.

Average Burden Hour Cost

The Commission calculates the average burden hour cost based on a blended hourly rate of \$59 (rounded up) that consists of ¼ Financial Specialist's wage, ¼ Lawyer's wage, ¼ Paralegal's wage, and ¼ Accountant's wage provided by the Department of Labor's Bureau of Labor Statistics, *available at* https://www.bls.gov/oes/current/naics4_523000.htm.

¹⁸ CEA section 5h(a)(1) states that "[n]o person may operate a facility for the trading or processing of swaps unless the facility is registered as a swap execution facility or as a designated contract market . . ." 7 U.S.C. 7b-3(a)(1). The Commission's proposed interpretation of this statutory provision would apply the CEA's registration requirement to additional entities that are not currently registered with the Commission as SEFs. As noted above, the commission estimates that 60 additional entities will be required to register as SEFs.

Baseline for Burden Hour Estimates

1. Distinguishing between respondents and information collection categories. The Commission explicitly distinguished between those information collections associated with SEF registration from those associated with the operation of registered SEFs when it renewed this OMB control number in 2016 (“**2016 Part 37 PRA Renewal**”). Accordingly, the tables below also will distinguish between information collections related to SEF registration and those related to the operations of registered SEFs. In this submission, the Commission will also explicitly distinguish between recordkeeping, reporting, and third-party disclosure information collections in separate tables.

2. Burden hour estimates for SEF registration: As discussed above, the Commission would create a voluntary information collection that would be applicable to only the 60 new entities (and not the 4 annual SEF applicants included in the Commission’s current estimate) in which these entities provide the Commission with their respective requests to delay the registration requirement. This would impose an additional 1 burden hour per new entity; the Commission notes that it expects 60 total one-time SEF applicants across the entire three-year period for this OMB Control Number rather than 60 such applicants each year, which is annualized to 20 entities per year (60 total entities / 3 years = 20 entities per year).

The Commission also estimates that the Part 37 NPRM would decrease the one-time burden hours imposed on each respondent related to the SEF registration process from 300 to 295 burden hours, although the aggregate burden hours across all respondents related to the SEF registration process would not change from the current estimate 1,200 annual burden hours since the new entities would incur offsetting burden hours related to their requesting a delay to the registration requirement.¹⁹

3. Burden hours estimates for registered SEFs: The Commission estimates that the Part 37 NPRM would decrease the annual burden hours imposed on each registered SEF from 1,000²⁰ to 407²¹ burden hours.

In the 2016 Part 37 PRA Renewal, the Commission increased its estimate for the general compliance-related obligations of SEFs from its original estimate of 308 to 437 hours per year. In its previous supporting statements to OMB, the Commission also separately listed SEFs’ annual compliance reports and quarterly financial reports as separate line items but included the burden hours associated with these information collections in its aggregate burden hour estimate under the “Designation and Compliance” line item (the Commission is relabeling this line item as “Regulatory and Core Principle Compliance”). For this supporting statement, the Commission will

¹⁹ 295 burden hours x 4 applicants for SEF registration = 1,180 total hours. Additionally, 20 hours from the new entities requesting a delay + 1,180 = 1,200 total annual burden hours related to the SEF registration process.

²⁰ In the 2016 Part 37 PRA Renewal, the Commission estimated that registered SEFs annually incur about 1,000 burden hours. The Commission increased its PRA burden hour estimate for registered SEFs from 308 annual hours to 1,000 annual hours after noting that certain information collections were significantly greater than the Commission had originally estimated, specifically the “§ 37.6(b) Confirmation Requirement” information collection discussed below.

²¹ See the table below for a specific break down of a SEF’s information collection obligations. As discussed below, the Commission’s elimination of the “§ 37.6(b) Confirmation Requirement” represents the majority of the decrease in the Commission’s estimated annual burden hours per SEF.

instead move these hours from the general “Regulatory and Core Principle Compliance” line item and include them in separate “Annual Compliance Reports” and “Quarterly Financial Statements” line items.

Additionally, the Commission also identified in the 2016 Part 37 PRA Renewal a specific compliance-related recordkeeping obligation that required a SEF to collect and maintain certain information related to a certain category of swap transactions, *i.e.*, uncleared swaps, pursuant to the SEF’s obligation under § 37.6(b) to provide transaction confirmations to counterparties containing all transaction terms (“**§ 37.6(b) Confirmation Requirement**”). After feedback from certain SEFs, the Commission recognized that the § 37.6(b) Confirmation Requirement imposed an information collection obligation of 563 annual burden hours per SEF, which was significantly greater than initially anticipated, as well as effected over 35,000 information collection responses.²² Accordingly, the Commission increased its burden hour estimate further from 437 to 1,000 annual burden hours. However, the Part 37 NPRM would eliminate this information collection and its associated burden hours and information collection responses for this category of swaps, which constitutes the majority of the decrease in the Commission’s estimate of annual burden hours and responses per SEF.

Burdens: Registered SEFs

Recordkeeping Burden Hours and Costs

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
Regulation(s)	Estimated Number of Respondents	Estimated Number of Responses by Each Respondent	Estimated Average Number of Burden Hours per Response	Annual Number of Burden Hours per Respondent	Estimated Average Burden Hour Cost	Total Average Hour Burden Cost Per Respondent (5 x 6)	Total Annual Responses (2 x 3)	Total Annual Number of Burden Hours (2 x 5)	Total Annual Burden Hour Cost of All Responses (2 x 7)

²² The Commission notes that this number is based on the estimated number of confirmations that a SEF would be required to provide its customers since the § 37.6(b) Confirmation Requirement required each SEF to include certain information required by the Commission on each confirmation the SEF provided to a transaction counterparty. As noted above, the Commission is eliminating the § 37.6(b) Confirmation Requirement and its corresponding burden hours and responses.

Regulatory & Core Principle Compliance Part 37 (Subparts A-P) and related Appendices²³	45	251 (i.e., each trade day) ²⁴	1.143 ²⁵	287 ²⁶	\$59	\$16,933	11,295	12,915	\$761,985
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²³This category was previously labeled as “Designation and Compliance (for registered SEFs).” The Commission is changing the name for the sake of clarity. The 45 respondents reflect the currently-registered 25 SEFs plus the 20 new entities expected to register as a result of the Commission’s proposed interpretation and application of the SEF registration requirement (25 + 20 = 45). Eventually, the Commission expects all 60 new entities to register, but for the purpose of the 3-year period covered by this submission, is estimating that 20 such entities will become fully registered SEFs.

²⁴ The Commission reached an estimate of approximately 251 trading days by assuming a year of [365.25 days] x [5 weekdays] ÷ [7 days in a week] = 260.89 weekdays. The Commission then subtracted 10 public holidays (based on the Office of Personnel Management’s calendar of public holidays): 260.89 days – 10 public holidays = 250.89 trading days, which the Commission rounds to 251. The Commission notes that not all SEFs may take all public holidays (e.g., Veteran’s Day), but a SEF may also offer a non-Federal holiday (e.g., Good Friday). See, e.g., ICE Swap Trade, available at <https://www.cftc.gov/sites/default/files/filings/ptc/17/12/ptc121417icesefsef005.pdf>.

²⁵ For the sake of consistency, the Commission reached this estimate by first starting with its previous total annual estimate in the 2016 Part 37 PRA Renewal of 437 burden hours in the corresponding “Designation and Compliance (for registered SEFs)” line item in the corresponding table in the previously-submitted Supporting Statement for this OMB Control Number 3038-0074 and creating a revised total annual burden hour estimate of 287 (see footnote 26 below). Based on the Commission’s revised estimate of 287 total annual burden hours per SEF, the Commission then divides 287 burden hours by 251 trade days to reach 1.143 burden hours per trade day per SEF.

²⁶ As noted above, the Commission previously estimated 437 associated burden hours for this line item. The Commission is subtracting from this total and moving the burden hours attributable to the information collections in §§ 37.1300 et al. (Quarterly Financial Statements) and § 37.1501(d) (Annual Compliance Report) to the table for reporting burden hours below. Prior to the Part 37 NPRM’s proposed changes, the Commission estimated that the information collections attributable to §§ 37.1300 et al. and § 37.1501(d) imposed 20 and 80 annual burden hours, respectively.

Additionally, the Commission is further reducing this estimate by an additional 50 annual burden hours as a result of the Part 37 NPRM’s proposed changes to § 37.401. Under the Part 37 NPRM, proposed § 37.401(b) would require that a SEF collect and evaluate data on its market participants’ trading activity outside of the SEF “as necessary” rather than “on an ongoing basis” as currently required. Similarly, proposed § 37.401(c) would require a SEF to monitor and evaluate general market data to detect and prevent manipulative activity “as necessary.” Together, the Commission estimates these changes will reduce annually recurring information collection burdens by approximately 50 burden hours per SEF. Accordingly, 437 (initial estimate) – 20 (moving §§ 37.1300 et al.) – 80 (moving § 37.1501(d)) – 50 (changes to § 37.401(c))

Reporting Burden Hours and Costs

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Responses by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number of Burden Hours per Respondent (3 x 4)	6. Estimated Average Burden Hour Cost	7. Total Average Hour Burden Cost Per Respondent (5 x 6)	8. Total Annual Responses (2 x 3)	9. Total Annual Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (2 x 7)
37.5(c) (Provision of Information Relating to a SEF) ²⁷	1	1	10	10	\$59	\$590	1	10	\$590

= 287 annual burden hours.

²⁷ Section 37.5(c) would be revised to create a new information collection that would require a SEF to file a notification with the Commission involving a direct *or indirect* transfer of 50% or more equity interest of the SEF (*e.g.*, the 50% acquisition of the SEF's holding company). The Commission estimates that this new information collection would affect only one respondent SEF. The Commission notes that the 10 burden hours related to this information collection is not included in the revised total of 407 burden hours per SEF since this information collection is estimated to only apply to a single SEF. Accordingly, for the SEF that incurs this information collection, the total estimated burden hours would be 417 hours (407 burden hours that apply to all SEFs + this 10 burden hour collection = 417 burden hours).

§§37.1300 et al (Quarterly Financial Statements)	45	4	10 ²⁸	40	\$59	\$2,360	180	1,800 ²⁹	\$106,200
§ 37.1401(g) (Program of Risk Analysis and Oversight Technology Questionnaire)³⁰	45	1	8	8	\$59	\$472	45	360	\$21,240

²⁸ The Commission obtained this result by estimating that current §§ 37.1300 et al imposes 20 total annual burden hours per SEF to provide the Commission with 4 quarterly financial reports. The Commission estimates that proposed § 37.1306(a)(2)(i) (requiring quarterly financial statements to be GAAP-compliant) would impose an additional 10 annual burden hours. Additionally, proposed § 37.1306(c)(2)(iv) (requiring a SEF to calculate and explain its wind-down costs) would impose an initial burden of 20 burden hours for the first year and 5 annual burden hours each subsequent year (*i.e.*, the Commission believes that it will impose additional burden hours for a SEF's initial estimate and corresponding explanation but will require fewer burden hours for a SEF to update its estimate and explanation for subsequent years); as a result, proposed § 37.1306(c) will impose a pro-rated burden of 10 hours per year on each SEF (20 burden hours for the initial year + 5 burden hours in year two + 5 burden hours in year three = 30 total burden hours for the next three years. Therefore, 30 total burden hours / 3 years = 10 extra burden hours per year). Accordingly, the Commission estimates that proposed §§ 37.1300 et al would require 40 annual burden hours per SEF (20 burden hours currently required + 10 additional annual burden hours for proposed § 37.1306(a) + 10 additional annual burden hours (pro-rated) for proposed § 37.1306(c) = 40 annual burden hours). Per report, each SEF would incur 10 burden hours (40 total annual burden hours / 4 quarterly reports = 10 burden hours per report).

The Commission acknowledges that a SEF may require more than 20 hours annually to collect the necessary financial information and create its financial reports and operating cost projections. The Commission, however, expects that SEFs, as part of their usual and customary business practice, prepare at least some form of financial statements and operating cost projections. In several cases, the Commission is aware that a SEF may be required to create such financial reports. Therefore, the Commission is not necessarily including in its PRA estimate all of the time it may take a SEF to create its financial reports; the Commission believes that 20 total burden hours for the current requirement is a reasonable estimate for the additional burdens, over and above what a SEF would already undertake as a usual and customary business practice (or as may otherwise be required by applicable law), to comply with its information collection obligations under §§ 37.1300 et al.

²⁹ The Commission notes that the Part 37 NPRM would revise § 37.1301(b) to permit a SEF that also operates as a derivatives clearing organization (“**DCO**”) to file a single report under § 39.11 for DCOs. The Commission believes that this will affect 1 SEF and would save that SEF approximately 5 annual burden hours due to being able to submit its information in a consolidated report to the Commission. Because this result would be *de minimis* and could cause confusion if subtracted in the above total annual burden hours in column 9, the Commission has excluded it. If included, however, the total burden hours in column 9 would be 1,800 total annual burden hours (1,800 – 5 = 1,795).

§ 37.1501(d) (Annual Compliance Report)³¹	45	1	52	52	\$59	\$3,068	45	2,340	\$138,060
Part 36 (MAT Process)³²	45	1	5	5	\$59	\$295	45	225	\$13,275

³⁰ Proposed § 37.1401(g) would create a new information collection by requiring a SEF to annually submit an up-to-date questionnaire based on an existing questionnaire located in existing Exhibit V to Form SEF in Appendix A to part 37. A SEF would only need to submit new changes to the questionnaire and would not need to resubmit any information that has not changed.

³¹ As noted above, the Commission estimates that the existing information collection associated with a SEF's annual compliance report imposed about 80 annual burden hours per SEF. The Part 37 NPRM would reduce this information collection by 28 burden hours. (80 burden hours – 28 burden hours = 52 burden hours).

First, under proposed § 37.1501(d), a SEF would no longer need to include in its annual compliance report (“**ACR**”) either a review of all the Commission regulations applicable to a SEF or identify the written policies and procedures designed to ensure compliance with the Act and Commission regulations. The Commission estimates this will save a SEF approximately 10 annual burden hours. Second, proposed § 37.1501(d)(3) would maintain the current requirement that an ACR describe the “financial, managerial, and operational resources” set aside for compliance with the Act and Commission regulations, but would eliminate the requirement that a SEF specifically discuss its compliance staffing and structure; a catalogue of investigations and disciplinary actions taken over the last year; and a review of disciplinary committee and panel performance. The Commission estimates that proposed § 37.1501(d)(3) would reduce annual recurring information collection burden hours by approximately 5 burden hours per SEF. Third, to facilitate the Commission's ability to assess a SEF's written policies and procedures regarding compliance matters, proposed § 37.1501(d)(4) would require a SEF to discuss only material noncompliance matters and explain the corresponding actions taken to resolve such matters rather than explaining all compliance matters. The Commission estimates that this change would reduce annual recurring information collection burden hours per SEF by 3 burden hours. Fourth, proposed § 37.1501(d)(5) would limit a SEF CCO's certification of an ACR's accuracy and completeness to “all material respects” of the report rather than to all aspects (including immaterial aspects) as currently required. The Commission estimates that this change would reduce annually recurring information collection burden hours per SEF/CCO by 10 burden hours. Accordingly, 10 + 5 + 3 + 10 = 28 annual burden hours saved.

³² As discussed above, the Part 37 NPRM would create a new reporting information collection related to the MAT process that would apply to all SEFs.

Third-Party Disclosure Burden Hours and Costs

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Responses by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number of Burden Hours per Respondent (3 x 4)	6. Estimated Average Burden Hour Cost	7. Total Average Hour Burden Cost Per Respondent (5 x 6)	8. Total Annual Responses (2 x 3)	9. Total Annual Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (2 x 7)
§ 37.203(e) (Error Trade Policy)	45	45	0.333 ³³	15	\$59	\$885	2,025	675	\$39,825

³³ Proposed § 37.203(e) would require a SEF to provide market participants with 3 information collections per error trade: (1) the first notice upon the SEF's initiation of a review of an alleged error trade, (2) a second notice upon any determination by the SEF as to whether the swap under review is or is not an error trade, and (3) a third notice upon the resolution of the SEF's review. The Commission estimates that each notice requires about 1/3 burden hours, for a total of 1 burden hour per error trade (1/3 burden hours x 3 notices = 1 burden hour per error trade). Further, the Commission estimates that each SEF on average will have approximately 15 error trade reviews per year. Accordingly, 1 burden hour x 15 error trade reviews per year = 15 burden hours per year.

Burdens: SEF Registration
Reporting Burden Hours and Costs³⁴

³⁴ The Commission has not identified any recordkeeping or third-party disclosure information collections related to SEF registration.

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Responses by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number of Burden Hours per Respondent (3 x 4)	6. Estimated Average Burden Hour Cost	7. Total Average Hour Burden Cost Per Respondent (5 x 6)	8. Total Annual Responses (2 x 3)	9. Total Annual Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (2 x 7)
§ 37.3 and Form SEF (SEF Registration)	4 ³⁵	1 ³⁶	295 ³⁷	295	\$59	\$17,405	4	1,180 ³⁸	\$69,620
§ 37.3(a) (Request to Delay Registration)	20	1	1	1	\$59	\$59	20	20	\$1,180

³⁵ 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 as part of the normal course of business. As discussed above, as a result of the Part 37 NPRM, the Commission also expects that 60 additional entities on a one-time basis will eventually need to register as SEFs. In this table, however, the Commission is not including such 60 one-time applicants because the Commission is noting that they will be requesting a delay in the application of the registration requirement and accounting for such respondents in the row immediately below (“§ 37.3(a) (Request to Delay the Registration Requirement”).

³⁶ For this purpose, the commission considers the entire SEF application process to constitute a single information collection.

³⁷ In the 2016 Part 37 PRA Renewal, the Commission estimated that the SEF application process (including applicants’ submission of Form SEF) imposed about 300 one-time burden hours. The Commission estimates that the Part 37 NPRM will decrease this estimate by approximately 5 burden hours per SEF since the Part 37 NPRM would streamline Form SEF by consolidating, amending, and eliminating several of the Form SEF exhibits.

³⁸ The Commission notes that the Part 37 NPRM would revise § 37.3(c) to eliminate the requirement that a SEF amend Form SEF when requesting an amended registration order from the Commission, which the Commission estimates would apply to 1 entity every 3 years and would save such entity 2 burden hours on a one-time basis. Because this result would be *de minimis* and could cause confusion if subtracted in the above total annual burden hours in column 9, the Commission has excluded it. If included, however, the total burden hours in column 9 would be 1,179.34 burden hours (2 burden hours every 3 years = 0.66 pro-rated burden hours per year. Accordingly, 1,180 total annual burden hours – 0.66 burden hours = 1,179.34).

Requirement)									
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