

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

**OMB CONTROL NUMBER 3038-0096**

Swap Data Recordkeeping and Reporting Requirements

**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.**

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd Frank Act”) went into effect.<sup>1</sup> Title VII of the Dodd-Frank Act amends the Commodity Exchange Act (“CEA”)<sup>2</sup> to establish a comprehensive new regulatory framework for swaps and security-based swaps. Section 728 of the Dodd-Frank Act specifically requires the Commodity Futures Trading Commission (“CFTC” or “Commission”) to establish standards for swap data recordkeeping and reporting, including the data elements to be collected and maintained by swap data repositories (“SDRs”) for each swap. Section 729 of the Dodd-Frank Act required that at least one counterparty to each swap have an obligation to report data concerning each swap. On December 20, 2011, the Commission adopted Part 45 of the Commission’s regulations to establish the swap data recordkeeping and reporting requirements mandated by the Dodd-Frank Act.<sup>3</sup>

On July 10, 2017, Commission staff announced a comprehensive review of swap reporting regulations and released the Roadmap to Achieve High Quality Swap Data (“Roadmap”)<sup>4</sup> to solicit feedback on improvements to data reporting and how the Commission’s regulatory goals may be achieved without imposing unnecessary burdens on market participants. The Commission is now issuing a notice of proposed rulemaking as part of this Roadmap initiative that will address relevant feedback received and streamline data reporting requirements. To the extent that the proposed amendments to Part 45 in the proposal would introduce new information collections that were not previously included in Information Collection 3038-0096 or modify existing collections already included in Information Collection 3038-0096, the Commission is proposing to revise Information Collection 3038-0096 to account for these additions and modifications. Most information collections discussed in existing Information Collection 3038-0096 would not be impacted by the proposed revisions, and the Commission is not proposing to revise the estimated burdens associated with those collections.

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<sup>1</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> 7 U.S.C. 1 *et seq.*

<sup>3</sup> See 17 CFR 45; *see also* 77 FR 2136 (January 13, 2012).

<sup>4</sup> See CFTC Letter 17-33, Division of Market Oversight Announces Review of Swap Reporting Rules in Parts 43, 45, and 49 of Commission Regulations (July 10, 2017), *available at* <http://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/17-33.pdf>; Roadmap to Achieve High Quality Swap Data, *available at* [http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/dmo\\_swapdataplan071017.pdf](http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf).

The proposed new or revised information collections could affect swap execution facilities (“SEFs”), designated contract markets (“DCMs”), SDRs, swap dealers (“SDs”), major swap participants (“MSPs”), derivatives clearing organizations (“DCOs”) and other non-SD/MSP/DCO reporting counterparties or entities that may become them in the future. The Commission is proposing to add or modify information collections for the following regulations:

- The Commission is proposing to move the SDR recordkeeping requirements from current § 45.2(f) and (g) to proposed § 49.12. This move will include the removal of the associated burden hours from Information Collection 3038-0096.<sup>5</sup> The Commission estimates the burden to be removed from 3038-0096 at 50 hours per SDR, for a total reduction of 150 burden hours annually (50 burden hours per SDR x 3 SDRs).
- Section 45.14 of the Commission’s regulations contains the requirements related to corrections of errors and omissions in swap data. Proposed § 45.14(a) would create a new requirement for reporting counterparties to verify the accuracy and completeness of swap data as part of the Commission’s proposed verification requirements. Proposed § 45.14(a) would require reporting counterparties to conform to the verification policies and procedures created by SDRs pursuant to proposed § 49.11, including receiving and responding as required to open swaps reports provided by the SDRs on a weekly or monthly basis, depending on the registration status of the reporting counterparty.
- Proposed § 45.14(b) would, similar to current § 45.14, require SEFs, DCMs, and reporting counterparties to correct errors and omissions in swap data previously reported to an SDR, or erroneously not reported to an SDR as required, as soon as technologically practicable after the error or omission is discovered. Most of the proposed modifications to the corrections requirements in proposed § 45.14 do not have PRA implications, but the Commission is proposing to add a new requirement for SEFs, DCMs, and reporting counterparties to notify the director of the Commission’s Division of Market Oversight when data errors or omissions cannot be corrected within three business days of discovery. In such case, proposed § 45.14(b) would require the SEF, DCM, or reporting counterparty to provide the director of the Division of Market Oversight with an initial assessment of the errors and omissions and an initial remediation plan.

**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 Commission uses the data required to be reported under Part 45 of the Commission’s regulations to fulfill its regulatory mandates, including systemic risk mitigation, market monitoring, and market abuse prevention. Additionally, the data may be made available to other

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<sup>5</sup> The Commission notes that there is no corresponding increase in the burden hours related to this proposed change to Information Collection 3038-0096 in the proposed changes to Information Collection 3038-0086 (the Commission’s information collection related to Part 49) because § 49.12 already incorporates the requirements of § 45.2(f) and (g). As a result, the burden hours associated with § 45.2(f) and (g) are already included within the recordkeeping burdens of Information Collection 3038-0086. The Commission does not anticipate any change in the recordkeeping burden hours requirements for SDRs due to proposed §§ 45.2(f) and (g) and 49.12.

domestic and foreign regulators, including the Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Farm Credit Administration and Federal Housing Finance Agency, Financial Stability Oversight Council, Securities and Exchange Commission, Department of Justice, and any other regulator the Commission determines to be appropriate, including foreign financial supervisors, foreign central banks, and foreign ministries.

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

All of the current and proposed information collections within Information Collection 3038-0096 involve the use of electronic collection protocols. All required data submissions to the Commission must be electronic.

- 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 information collected pursuant to Part 45 of the Commission's regulations is not already collected by the Commission or other regulator for any other purpose and is not publicly available through another source. The swap data is unique and no other similar information is available. There are no other existing regulations that could be modified to serve a similar purpose in any practical way.

- 5. If the collection of information involves small business or other small entities (Item 5 of OMB From 83-1), describe the methods used to minimize burden.**

This collection of information would not involve any small business or other small entities. The Commission has previously established that none of the entities that would be affected by this collection are 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.**

If the information required under this collection of information were not collected or were collected less frequently, enforcement of the CEA and the Commission's regulations would be severely curtailed. The Commission would be less able to oversee the compliance of registered entities and would be unable to effectively monitor the swaps markets, as was the intention of the Dodd-Frank Act.

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

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

The proposed amendments to § 45.14(a) would require the associated collections to be conducted on a weekly or monthly basis, depending on the registration status of the reporting counterparty receiving the open swaps reports from the SDRs. This frequency is necessary to help ensure that the swap data available to the Commission is accurate and complete. Less frequent collection could hamper the Commission's ability to oversee the swaps markets and perform its regulatory functions.

The proposed amendments to § 45.14(b) do not specifically require the collection of information more than quarterly, as the required collection is event specific, but the collections could theoretically occur more than quarterly. The Commission, however, believes that the collection will likely occur less than quarterly for each respondent. Based on the Commission's experience with reporting errors and omissions by SEFs, DCMs, and reporting counterparties, errors and omissions that require more than three business days to correct occur far less often than once a quarter per respondent.

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

The proposed collections related to proposed § 45.14(a) would require information to be provided fewer than 30 days after the triggering event for the collection. This requirement is necessary to ensure that swap data maintained by SDRs is verified in a timely manner, in order for accurate swap data to be available to the Commission in performing its regulatory functions.

The proposed collections related to proposed § 45.14(b) would require information to be provided fewer than 30 days after the triggering event for the collection. This requirement is necessary to ensure that the Commission is aware of potentially large amounts of incorrect or omitted data in order to adjust its regulatory initiatives to compensate and to more efficiently work with SEFs, DCMs, SDRs, and reporting counterparties to have the data corrected as soon as possible.

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

Not applicable, respondents are not required 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;**

The proposed amendments to Part 45 would not modify Information Collection 3038-0096 in regard to recordkeeping requirements beyond moving the SDR recordkeeping requirements to Part 49 – and removing the associated burden from Information Collection 3038-0096 – as described above. The recordkeeping requirements of § 45.2 and other Commission regulations, including §§ 1.31 and 49.12 would continue to require records of the information required under Information Collection 3038-0096 to be kept for at least five years. Those

recordkeeping obligations are discussed in previous filings related to Information Collection 3038-0096 and the information collections for the other Commission regulations.

- **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;**

Not applicable, the proposed collection does not involve the use of any statistical data classification.

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

Not applicable, the proposed collection does not 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**

Not applicable, the proposed collection does not include any pledges of confidentiality that are not supported by authority established in statute or regulation.

- **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.**

All current and proposed requirements to submit proprietary or other confidential information are subject to the Commission's existing statutory, regulatory, and procedural requirements to protect the confidentiality of such information. This includes the requirements of sections 8(a) and 21(c)(6) of the Act as well as in §§ 49.16, 49.17, and 49.18, and parts 145 and 147 of the Commission's regulations. Information required to be collected or reported under Information Collection 3038-0096 is generally not made public, though it may be shared with other regulators pursuant to Part 49 of the Commission's 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 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.**

The Commission seeks public comment on any aspect of the proposed amendments to this collection of information in the proposing release for this proposed rulemaking dated \_\_\_\_\_, 2019 beginning on page \_\_\_\_\_.

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

Not applicable, no payment or gift will be provided to respondents.

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

All current and proposed requirements to submit proprietary or other confidential information are subject to the Commission's existing statutory, regulatory, and procedural requirements to protect the confidentiality of such information. This includes the requirements of sections 8(a) and 21(c)(6) of the Act as well as in §§ 43.4, 49.16, 49.17, and 49.18, and parts 145 and 147 of the Commission's regulations. Information required to be collected or reported under Information Collection 3038-0096 is generally not made public, though it may be shared with other regulators pursuant to Part 49 of the Commission's 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.**

Not applicable, the collection does not involve any questions of a sensitive nature, as the term is used in this question.

- 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.**

Please see attachment A for the estimated hour burden for the proposed collections of information discussed in this supporting statement.

In calculating this cost estimate, the Commission estimates the appropriate wage rate based on salary information for the securities industry compiled by the Department of Labor's Bureau of Labor Statistics ("BLS"). Commission staff arrived at an hourly rate of \$72.23 using figures from a weighted average of salaries and bonuses across different professions contained in the most recent BLS Occupational Employment and Wages Report (May 2018) multiplied by 1.3 to account for overhead and other benefits. The Commission estimated appropriate wage rate is a weighted national average of mean hourly wages for the following occupations (and their relative weight): "computer programmer – industry: securities, commodity contracts, and other financial investment and related activities" (50% weight); "compliance officer – industry: securities, commodity contracts, and other financial investment and related activities" (25%); and "lawyer – legal services" (25%). Commission staff chose this methodology to account for the variance in skill sets that may be used to accomplish the collection of information.

- 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.**

In calculating this cost estimate, the Commission estimates the appropriate wage rate based on salary information for the securities industry compiled by the Department of Labor's Bureau of Labor Statistics ("BLS"). Commission staff arrived at an hourly rate of \$72.23 using figures from a weighted average of salaries and bonuses across different professions contained in the most recent BLS Occupational Employment and Wages Report (May 2018)<sup>6</sup> multiplied by 1.3 to account for overhead and other benefits. The Commission estimated appropriate wage rate is a weighted national average of mean hourly wages for the following occupations (and their relative weight): "computer programmer – industry: securities, commodity contracts, and other financial investment and related activities" (50% weight); "compliance officer – industry: securities, commodity contracts, and other financial investment and related activities" (25%); and "lawyer – legal services" (25%). Commission staff chose this methodology to account for the variance in skill sets that may be used to accomplish the collection of information. The Commission believes that costs discussed in the response to this question will largely arise from the need for SDRs to use staff resources to update and maintain their operations and therefore the wage rate is the proper method to estimate the costs.

Proposed § 45.14(a) would create costs for reporting counterparties relate to the need to build or update their systems in order to perform their verification responsibilities. In addition to the costs discussed under the response to Question 12 above and in Attachment A, the Commission estimates that reporting counterparties would each need 100 hours to build or update their systems, for a cost of \$7,223.00 per reporting counterparty (100 hours x \$72.23/hour) and a total additional cost across all 1,702 reporting counterparties of \$12,293,546.00. The Commission also estimates that reporting counterparties would each need 10 hours per year to maintain their verification systems, at a cost of \$722.30 per reporting counterparty (10 hours x \$72.23/hour) for a total additional maintenance cost across all reporting counterparties of \$1,229,354.60 per year.

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

The Commission does not anticipate that the proposed changes will require additional staff time or technology resources beyond what is already dedicated to this collection, as discussed in previous filings related to Information Collection 3038-0096.

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

As discussed above, the Commission is proposing amendments to Part 45 of the Commission's regulations in order to improve the quality of swap data available to the Commission as well as to streamline regulatory requirements governing data reporting. This supporting statement discusses adjustments to burden hours calculations for Information

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<sup>6</sup> The BLS Occupational Employment and Wages Report is available at [https://www.bls.gov/oes/current/naics4\\_523000.htm](https://www.bls.gov/oes/current/naics4_523000.htm).



Collection 3038-0096 to account for modified and new burdens associated with the proposed changes to the regulation. The Commission is also updating the overall burden hours, collection volumes, and costs related to Information Collection 3038-0096, based on updated information related to other collections within Information Collection 3038-0096 that are not being modified by this proposal. For example, the Commission is updating the estimated numbers of each type of entity affected by this collection to accurately reflect the current number of each type of entity. This includes 24 SEFs (previously 40), 3 DCMs that allow execution of swaps (previously 18), 3 SDRs (previously 4), 14 DCOs (previously 12), 103 SDs/MSPs (previously 125), and 1585 non-SD/non-MSP reporting counterparties (previously 325).

- 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, the results of this collection of information are not planned to be published for statistical use.

- 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, the Commission is not seeking such approval for this publication.

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

Not applicable, there are no exceptions.

## Attachment A

### OMB Control Number 3038-0096 Swap Data Recordkeeping and Reporting Requirements

#### Reporting Burden

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Reports by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number of Burden Hours per Respondent (3 x 4)	6. Estimate of Average Burden Hour Cost <sup>7</sup>	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)
45.14(a)	117 SD/MSP/DCO  1585 Non-SD/MSP/DCO	52 (SD/MSP/DCO)  12 (Non-SD/MSP/DCO)	2	104 (SD/MSP/DCO)  24 (Non-SD/MSP/DCO)	\$72.23	\$7,511.92 (SD/MSP/DCO)  \$1,733.52 (Non-SD/MSP/DCO)	6,084 (SD/MSP/DCO)  19,020 (Non-SD/MSP/DCO)	12,168 (SD/MSP/DCO)  38,040 (Non-SD/MSP/DCO)	\$878,894.64 (SD/MSP/DCO)  \$2,747,629.20 (Non-SD/MSP/DCO)
45.14(b)	1729 SEF/DCM/Reporting counterparty	1	30	30	\$72.23	\$2166.90	1,729	51,870	\$3,746,570.10

#### Recordkeeping Burden

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Reports by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number of Burden Hours per Respondent (3 x 4)	6. Estimate of Average Burden Hour Cost <sup>8</sup>	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)
45.2(f) and (g)	3 SDR	(154,301,679)	.0000003	(50)	\$72.23	(\$3,611.50)	(462,905,036)	(150)	(\$10,834.50)

<sup>7</sup> As described above in the answer to question 13, the Commission calculated the average wage rate to \$72.23.

<sup>8</sup> As described above in the answer to question 13, the Commission calculated the average wage rate to \$72.23.

