

SUPPORTING STATEMENT FOR REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0096

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. Title VII of the Dodd-Frank Act amends the Commodity Exchange Act (“CEA”) 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.

This supporting statement concerns the renewal of existing collections of information required by 17 CFR Part 45. CFTC regulation 45 imposes recordkeeping and reporting requirements on the following entities: swap dealers (“SDs”), major swap participants (“MSPs”), and counterparties to swaps who are neither SDs nor MSPs (“non-SD/MSP counterparties”).

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 by CFTC regulation 45 to fulfill its regulatory mandates, including systemic risk mitigation, market monitoring, and market abuse prevention.

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.

CFTC regulation 45 generally requires affected parties to maintain records electronically.

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

Prior to enactment of the Dodd-Frank Act, the Commission did not have authority to require swap data recordkeeping and reporting for swaps. The information required to be reported by respondents pursuant to Part 45 is not otherwise available to the Commission or other agencies. The information collection is not otherwise available from any other source. To the maximum extent possible, the information collection was designed to avoid duplication. In all cases where it was possible to leverage information collections contained in other rulemakings, the Commission elected not to impose collections that would increase burden.

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 entities affected by CFTC regulation 45 include SDs, MSPs, and non-SD/MSP counterparties. SDs and MSPs are not small entities for the purposes of the RFA.¹ Although there are an estimated 30,000 non-SD/MSP counterparties, very few non-SD/MSP counterparties are required to report swap data pursuant to CFTC regulation 45. CFTC regulation 45 requires reporting by a non-SD/MSP counterparty only with respect to swaps in which the other counterparty is not an SD or MSP, and the considerable majority of swaps involve at least one SD or MSP. While CFTC regulation 45 also requires recordkeeping of non-SD/MSP counterparties, the Commission believes that the records required under CFTC regulation 45 are already kept by swap counterparties in their normal course of business.

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

Failure to maintain the records or to report swap data required by CFTC regulation 45 would adversely affect the Commission's ability to ensure that complete data concerning all swaps is maintained in SDRs and is available to the Commission and other regulators as required by the Dodd-Frank Act. The information collection cannot be conducted less frequently without compromising the accuracy and timeliness of the data.

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;

CFTC regulation 45 requires reporting directly to the Commission only in the exceptional case of a swap in an asset class for which no SDR accepts swap data. Such reporting will be required only when requested by the Commission and has not occurred since the Commission adopted regulation 45 in 2011.

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

¹ See respectively, Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2620 (Jan. 19, 2012) and 75 FR 71379, 71385 (Nov. 23, 2010) (swap dealers and major swap participants).

This question does not apply. CFTC regulation 45 does not require written responses to a collection of information in fewer than 30 days after receipt.

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

This question does not apply. CFTC regulation 45 does not require the submission of any original documents or copies of documents. CFTC regulation 45 generally requires electronic reporting.

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

Section 45.2 requires affected parties to keep certain records pertaining to swaps throughout the life of the swap, and for a period of at least five years from final termination of the swap. This retention period is required because swap transactions can continue to exist over substantial periods of time, during which their key economic terms can change. Accordingly, swaps must be monitored by the Commission and other financial regulators throughout their existence, pursuant to the Dodd-Frank Act.

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

This question does not apply. CFTC regulation 45 does not require nor involve any statistical surveys.

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

This question does not apply. CFTC regulation 45 does not require nor involve the use of any statistical data classification.

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

This question does not apply. CFTC regulation 45 does not require nor 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.

CFTC regulation 45 requires the reporting of data to SDRs. The Commission's regulations require SDRs to maintain safeguards against the misappropriation or misuse of swap

data. The Commission has access to data maintained at SDRs, but is prohibited (save for limited exceptions) from disclosing swap data pursuant to Section 8 of the CEA.

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

The Commission affirmatively sought comment from the public concerning the renewal of existing collections of information required by CFTC regulation 45. A copy of the solicitation of public comment appeared in the Federal Register at 84 FR 50413 (September 25, 2019). The Commission received no comments.

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 soliciting public comment on the renewal of this collection.

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.

The Commission has continued to meet with affected parties since CFTC regulation 46 was enacted.

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

This question does not apply. This information collection does not involve the provision of any payment or gift to respondents.

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

The Commission is required to provide confidentiality to respondents pursuant to the Freedom of Information Act, Privacy Act of 1974, CEA, and Commission regulations requiring the confidentiality of information.² Section 8(a) of the CEA provides for the confidentiality of data and information except under the limited circumstances delineated therein.

² See 17 CFR 145

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

This question does not apply. CFTC regulation 45 does not require nor request the provision of sensitive information, as that term is used in question 11.

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

- Indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than ten) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
- If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 18 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 18.

CFTC regulation 45 imposes recordkeeping and reporting obligations on affected parties. As detailed below, Commission staff estimate that the estimated 1,732 respondents incur a total annual burden of 2,279,202 hours and an associated total cost of \$135,229,006.

See Attachment A for cost estimates associated with the burden hours calculated by this Question 12. In calculating the cost estimate, the Commission estimated 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 \$72.48 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.³ The Commission

³ The BLS Occupational Employment and Wages Report is available at https://www.bls.gov/oes/current/naics4_523000.htm.

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.

The Commission does not expect that the proposed changes to part 45 will result in any start-up or maintenance costs for respondents in addition to what is discussed in the response to Question 12 above and in Attachment A.

14. Provide estimates of the annualized costs to the Federal Government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing and support staff), and any other expense that would not have been incurred without this collection of

information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

The 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.

The Commission is 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 25), 3 DCMs that allow execution of swaps (previously 15), 3 SDRs (previously 4), 14 DCOs that clear swaps (not previously included), 103 SDs/MSPs (previously 125), and 1585 non-SD/non-MSP reporting counterparties (previously 703).

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.

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.

This question does not apply.

Attachment A

OMB Control Number 3038-0096

Swap Data Reporting and Recordkeeping

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. Estimated Average Burden Hour Cost ⁴	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)
45.3	1,732	10,000	0.01	100	\$72.48	7248	1732000	173200	7248
45.4	1,732	207,543	0.003	162	\$72.48	11741.76	359464476	280584	11741.76
45.5	1,732	10,000	0.01	100	\$72.48	7248	1732000	173200	12553536
45.6	1,732	10,000	0.01	100	\$72.48	7248	1732000	173200	12553536
45.7	1,732	10,000	0.01	100	\$72.48	7248	1732000	173200	12553536
45.14	1,732	52	2	104	\$72.48	7537.92	90064	180128	13055677.4
							428,834,540	1,153,402	

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. Estimated Average Burden Hour Cost ⁵	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	1,732	10,000	0.01	650	\$72.48	47112	1732000	1,125,800	81597984
		257,595		1,316			446,154,518	2,279,312 hours	

⁴ As described above in the answer to question 13, the Commission calculated the average wage rate to \$72.48.

⁵ As described above in the answer to question 13, the Commission calculated the average wage rate to \$72.48.