

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

OMB CONTROL NUMBER 3038-0070

Proposed Amendments to the Commission’s Regulations Related to Real-Time Public Reporting
and Block Trades

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.**

Section 2(a)(13) of the CEA directs the Commission to establish certain standards for the real-time public reporting of swap transaction and pricing data. The Commission established these regulations in Part 43 of the Commission’s regulations. The regulations govern topics including reporting, public dissemination, and timestamping requirements for swap execution facilities (“SEFs”), designated contract markets (“DCMs”), swap data repositories (“SDRs”), derivatives clearing organizations (“DCOs”), swap dealers (“SDs”), major swap participants (“MSPs”), and non-SD/MSP/DCO counterparties.

The Commission is proposing amendments to Part 43 to streamline reporting requirements and clarify and update certain provisions. The Commission is proposing to revise Information Collection 3038-0070 to account for any additions and revisions. Some information collections discussed in existing Information Collection 3038-0070 would not be impacted by the proposed revisions, and the Commission is not proposing to revise the estimated burdens associated with those collections.

The proposed new or revised information collections would affect SDRs, SEFs, DCMs, and reporting counterparties that report swap data for SDRs to publicly disseminate to provide price transparency, as directed by Congress in the CEA. Together, these proposed revisions and additions are intended to improve real-time public reporting for market participants that use real-time public data. All of the amendments described below are reflected in Attachment A. The Commission is proposing to add or modify information collections for the following regulations:

- Existing § 43.3 requires reporting counterparties to send swap reports to SDRs as soon as technologically practicable after execution. The Commission is proposing to amend § 43.3 to establish new requirements for post-priced swaps in § 43.3(a)(4). The amendments proposed to § 43.3 would allow reporting counterparties more time to report post-priced swaps to SDRs. Currently, some entities report post-priced swaps using a placeholder price, and then send a swap report later amending the price. Those entities would experience a reduction in the number of swap reports they are required to send pursuant to § 43.3 under the proposal.

- Existing § 43.3 sets out the requirements for counterparties to report swap transaction and pricing data to SDRs for public dissemination. Current § 43.3 does not currently account for DCOs in the hierarchy of entities required to report to SDRs. The Commission is proposing to add DCOs to the hierarchy in § 43.3(a)(5). This would create a new requirement for DCOs to send swap transaction and pricing data reports to SDRs, to the extent they are not currently required to do so. However, because only 14 DCOs (out of 1,732 total registrants) would be subject to this requirement, and these DCOs would report this data only in limited circumstances, the Commission is not proposing to amend its estimate for § 43.3 based on this change.¹
- Existing § 43.3 requires reporting counterparties to send swap reports to SDRs as soon as technologically practicable after execution. The Commission is proposing to amend § 43.3 to establish new requirements for reporting prime brokerage swaps in § 43.3(a)(6). The proposed rules would establish that “mirror swaps” would not need to be publicly disseminated by SDRs. Reporting counterparties would continue to report mirror swaps to SDRs pursuant to part 45, but the amendment to § 43.3 would reduce the number of reports SDRs would be required to publicly disseminate according to § 43.4.
- Existing § 43.3(h) requires timestamping by multiple entities. Existing § 43.4(h)(1) requires registered entities, SDs, and MSPs to timestamp real-time swap reports with the time they receive the data from counterparties, as applicable, and the time at which they transmit the report to an SDR. Existing § 43.3(h)(2) requires SDRs to timestamp the swap reports they receive from SEFs, DCMs, and reporting parties, and then timestamp the report with the time they publicly disseminate it. Existing § 43.3(h)(3) requires SDs and MSPs have to timestamp all off-facility swaps they report to SDRs. § 43.3(h)(4) requires all entities to have recordkeeping requirements with respect to these timestamps. The Commission is proposing to eliminate these requirements, which will reduce the burden hour estimates associated with these time-stamp requirements. Finally, removing § 43.3(h)(4) would remove the recordkeeping burden for these entities.

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’s regulations in part 43 require SEFs, DCMs, and reporting counterparties to report swap transaction and pricing data to SDRs and require SDRs to disseminate the swap transaction and pricing data to the public. The SDRs do not provide this data to the Commission directly. The Commission may, however, use the swap transaction and pricing data in connection with fulfilling any of its regulatory duties or for other purposes. This

¹ Most clearing swaps are the result of an original swap being accepted for clearing by a DCO. In these cases, there is no part 43 real-time public reporting for the clearing swaps. However, there are limited circumstances in which DCOs create clearing swaps for which there is no original swap, and the clearing swaps may meet the definition of a publicly reportable swap transaction in part 43. For example, a DCO may enter into a publicly reportable swap transaction to manage the default of a clearing member. In these circumstances, the part 43 and part 45 reporting hierarchies may conflict. The Commission’s proposal to add DCOs to the reporting counterparty hierarchy for clearing swaps that are publicly reportable swap transactions is expected to apply in only limited circumstances, such as on the default of a clearing member. Therefore, the Commission does not believe that any adjustment to its current estimate for part 43 should be made based on this change.

publicly-reported data is also available to all other regulators and to the public and they may use it for any purpose as they see fit. The swap transaction and pricing data is made public in order to increase the transparency of the swaps market for regulators and market participants.

- 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 3038-0070 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 43 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 transaction and pricing 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 Form 83-I), describe the methods used to minimize burden.**

The Commission has previously established that DCMs, DCOs, MSPs, SDs, SDRs, and SEFs are not small entities. In addition, based on its review of publicly available data, the Commission believes that the overwhelming majority of non-SD/MSP/DCO reporting counterparties affected by this proposed rulemaking are eligible contract participants ("ECPs") that the Commission has previously determined are not small entities or do not otherwise meet the definition of "small entity." Accordingly, the Commission does not believe that this collection of information would affect a substantial number of 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.**

The public reporting requirements make swap transaction and pricing data available to the public in order to enhance price discovery and market transparency. Without the required frequency of reporting set forth in the Commission's regulations, the general public would not receive swap transaction and pricing data in a timely manner that would allow for meaningful price discovery, which would frustrate the purpose of the statute.

- 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;**

Real-time swap transaction and pricing data is not required to be reported to the Commission.

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

This does not apply.

- **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;**

Currently § 43.3(h)(4) requires registered entities, swap dealers and major swap participants to maintain records with respect to timestamps for at least five years from the execution of the publicly reportable swap transaction. The proposed amendments to part 43 would modify Information Collection 3038-0070 by removing the recordkeeping burden for these entities.

- **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 is not connected or related to any statistical survey.

- **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 §§ 43.4, 49.16, 49.17, and 49.18, and parts 145 and 147 of the Commission's regulations. Most information required to be collected or reported under Information Collection 3038-0070 is made public.

- 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.

- 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.**

The Commission does not provide respondents with an assurance of confidentiality beyond that provided by applicable 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 §§ 43.4, 49.16, 49.17, and 49.18, and parts 145 and 147 of the Commission's regulations. Most information required to be collected or reported under Information Collection 3038-0070 is made public.

- 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. As shown on Attachment A, the aggregate burden for all of the collections of information under OMB 3038-0070 (whether or not affected by the proposal) is estimated to apply to 1,732 respondents, which would file an estimated 35,993,804 reports annually, or an average 20,747 reports per respondent. The estimated gross annual reporting burden for information collection 3038-0070 would be 1,206,508 burden hours across all respondents.

In calculating cost estimates, 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.

Additional detail regarding the burden estimates for each regulatory requirement affected by the proposal is provided below. As an initial matter, the Commission has proposed amendments to regulations that would impact the collections of information under OMB 3038-

0070 (Certain Swap Data Repository and Data Reporting Requirements, 84 Fed. Reg. 21044, May 13, 2019) (the “May 2019 release”). The Commission has re-opened the comment period for that proposal to align with the comment period for the proposal accompanying this supporting statement. The two rulemakings are related, so commenters will be able to comment on both at the same time, and the Commission intends to finalize the rulemakings together.

In the May 2019 release, the Commission estimated that the proposed amendments to part 43 would result in total overall burdens for updated Information Collection 3038–0070 as follows: 1,732 SEFs, DCMs, DCOs, SDRs, and reporting counterparties would be affected, with an estimated annual number of responses per respondent of 21,247, and an estimated total annual responses of 36,799,804 with an estimated .033 burden hours per response, and an estimated 701 total annual burden hours per respondent, and an estimated 1,214,392 aggregate total burden hours.

Since the amendments to the part 43 regulations proposed in the Federal Register release accompanying this supporting statement for the collections of information under OMB 3038-0070 are closely related to the proposed amendments in the May 2019 release, the Commission’s estimates in this supporting statement are based on the updates to burden estimates proposed in the May 2019 release. Further amendments to the estimates the Commission made in May 2019 based on the amendments proposed to § 43.3 and § 43.4 in this rulemaking are discussed below. The Commission shows the estimate for each of these changes in Attachment A.

- The Commission estimates that new regulations proposed in § 43.3(a)(4) would reduce the number of responses for 50 respondents by 5,000 responses (100 responses each).² The Commission has shown in Attachment A that this would result in a net reduction of 335 burden hours from the current reporting burden estimates.
- The Commission is proposing to establish new requirements for reporting prime brokerage swaps in § 43.3(a)(6). The proposed rules would establish that “mirror swaps” would not need to be publicly disseminated by SDRs. Reporting counterparties would continue to report mirror swaps to SDRs pursuant to part 45, but the amendment to § 43.3 would reduce the number of reports SDRs would be required to publicly disseminate according to § 43.4. The Commission estimates that the amendments would reduce the number of mirror swaps SDRs would need to publicly disseminate pursuant to § 43.4 by 100 reports per each SDR, or 300 reports in the aggregate.
- The Commission estimates that the proposed removal of the requirement for reporting entities to timestamp their swap reports under proposed § 43.4(h) would reduce the associated burden hours for affected respondents.

² The Commission is proposing to amend § 43.3(a)(4) to allow reporting counterparties more time to report post-priced swaps to SDRs. Currently, some entities report post-priced swaps using a placeholder price, and then send a swap report later amending the price. Those entities would experience a reduction in the number of swap reports they are required to send pursuant to § 43.3 under the proposal. The Commission estimates 50 SD/MSP reporting counterparties would reduce the number of post-priced swaps reports they report to SDRs by 100 reports per respondent annually, or 5,000 reports in the aggregate, for a reduction in aggregate burden hours of 335 hours.

- In addition, removing § 43.3(h)(4) would remove the recordkeeping burden for these entities. As shown in Attachment A, this would remove the current recordkeeping burden of 5,854 aggregate hours from the collection.
- Taking all of the proposed changes to the reporting and recordkeeping burdens into account, the Commission estimates that under § 43.3 and § 43.4, as they are proposed to be amended, 1,729 respondents would file 20,747 reports annually with an average of 0.07 burden hours per report, or an aggregate of 1,206,508 burden hours across all registrants.

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 43 will result in any start-up or maintenance costs for respondents.

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 3038-0070.

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 43 of the Commission's regulations in order to improve the quality of swaps transaction and pricing data available to the public as well as to streamline regulatory requirements governing data reporting. This supporting statement discusses adjustments to burden hours calculations for Information Collection 3038-0070 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 3038-0070.

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

Amendments to OMB Control Number 3038-0070 Real-Time Public Reporting and Block Trades

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 ³	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)
43.3(a)(4) ⁵	50 SDs/MSPs	(100.00)	0.067	(6.70)	\$72.23	(483.94)	(5000.00)	(335.00)	(\$24,197.10)
43.3(a)(6) ⁶	3 SDRs	(100.00)	0.067	(6.70)	72.23	(483.94)	(300.00)	(20.10)	(\$1,451.82)
43.4(h)(1)	144 registered entities, SDs, MSPs	(100.00)	0.067	(6.70)	\$72.23	(483.94)	(14400.00)	(964.80)	(\$69,687.50)
43.4(h)(2)	3 SDRs	(100.00)	0.067	(6.70)	\$72.23	(483.94)	(300.00)	(20.10)	(\$1,451.82)
43.4(h)(3)	103 SDs/MSPs	(100.00)	0.067	(6.70)	\$72.23	(483.94))	(10300.00)	(690.10)	(\$49,845.90)
Total Reporting Adjustment from Proposal							(30,300)	(2,030.10)	(\$146,634)

³ The estimated average burden hours of 0.067 burden hours per response has been rounded to .07 burden hours in the related Federal Register release for this rulemaking and in Item 12 above.

⁴ As described above in the answer to Item 12, the Commission calculated the average wage rate to \$72.23.

⁵ The Commission estimates that approximately half of SDs/MSPs would report fewer post-priced swaps under amended § 43.3(a)(4).

⁶ The Commission estimates that SDRs would each report 100 fewer mirror swaps each year with amended § 43.3(a)(6).

Recordkeeping Burden⁷

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Annual 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	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)
43.3(h)(4)	4 SDRs			(76)	\$82.30	(\$6,254.80)		(304)	(\$25,019.2)
	125 SDs/MSPs			(30)	\$87.47	(\$2,624)		(3,750)	(\$328,013)
	25 SEFs			(45)	\$87.47	(\$3,936)		(1,125)	
	15 DCMs			(45)	\$87.47	(\$3,936)		(675)	(\$98,403.80)
									(\$59,042.30)
Total Recordkeeping Adjustment from Proposal	169 SDRs, SDs/MSPs, SEFs, DCMs			(196)				(5,854)	(\$510,478)

⁷ All figures described for recordkeeping are from the Commission's 2018 renewal of the collection. As the Commission is proposing to eliminate the recordkeeping requirement for all entities in § 43.3(h)(4), it is not proposing to update or calculate any new figures that were not calculated with the renewal. Instead, the Commission has included the table to show the removal of 5,854 recordkeeping burden hours from the collection.