

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

Comparability Determinations for the Group A and B Requirements

OMB CONTROL NUMBER 3038-0072

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(i) of the Commodity Exchange Act (“CEA”) provides the Commodity Futures Trading Commission (“Commission”) with express authority over activities outside the United States relating to swaps when certain conditions are met. Specifically, section 2(i) provides that the swaps provisions of the CEA enacted by Title VII (“Title VII”) of the Wall Street Transparency and Accountability Act of 2010 (“Dodd-Frank Act”) (including any rule prescribed or regulation promulgated under the CEA) do not apply to activities outside the United States (“U.S.”) unless such activities have a “direct and significant connection with activities in, or effect on, commerce of the United States” or they contravene Commission rules or regulations as are necessary or appropriate to prevent evasion of the swaps provisions of the CEA enacted under Title VII.

The Commission is proposing a rule (“Proposed Rule”) addressing the cross-border application of certain swaps provisions of the CEA, as added by Title VII. The Proposed Rule defines key terms for purposes of applying these CEA’s swaps provisions to cross-border transactions, addresses the cross-border application of the registration thresholds and certain requirements (“Group A and Group B Requirements”)¹ applicable to swap dealers and major swap participants, and establishes a formal process for requesting comparability determinations for such requirements from the Commission.

As part of the Proposed Rule, the Commission is proposing to permit certain swap dealers and major swap participants registered with the Commission (“swap entities”) to comply with a foreign jurisdiction’s swap standards in lieu of the Group A and Group B Requirements in certain cases, provided that the Commission determines that such foreign standards are comparable to such requirements. The Proposed Rule would implement a process pursuant to which the Commission would conduct these comparability determinations, including outlining procedures for initiating such determinations. A comparability determination could be requested by swap entities that are eligible for substituted compliance for the Group A and Group B Requirements, their trade associations, and foreign regulatory authorities meeting certain

¹ The Group A Requirements include: (1) chief compliance officer; (2) risk management; (3) swap data recordkeeping; and (4) antitrust considerations. The Group B Requirements include: (1) swap trading relationship documentation; (2) portfolio reconciliation and compression; (3) trade confirmation; and (4) daily trading records.

requirements. Applicants seeking a comparability determination would be required to furnish certain information to the Commission that provides a comprehensive explanation of the foreign jurisdiction's relevant swap standards, including how they might differ from the corresponding requirements in the CEA and the Group A and Group B Requirements and how, notwithstanding such differences, the foreign jurisdiction's swap standards achieve comparable outcomes to those of the Commission. Once a comparability determination is made for a jurisdiction, it would apply for all entities or transactions in that jurisdiction to the extent provided in the comparability determination, as approved by the Commission and subject to any conditions specified by the Commission. The information collection would be necessary for the Commission to consider whether the foreign jurisdiction's relevant swap standards are comparable to the Commission's requirements.

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.

Persons requesting a comparability determination would be required to submit documentation to the Commission. As noted above, swap entities that are eligible for substituted compliance, their trade associations, and foreign regulatory authorities meeting certain requirements, may make such a request. The Commission will use this information to determine whether the relevant foreign jurisdiction's standards are comparable to the relevant Group A and Group B Requirements for purposes of allowing substituted compliance under the Proposed Rule.

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.

The collection of information may be reported electronically. The Commission would permit requestors of comparability determinations to submit information to the Commission 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.

The collection of information includes the submission of information from requestors that are engaged in activities that implicate the Group A and Group B Requirements. This information would not have been previously submitted by the respondents to the Commission. Therefore, the required information is not already collected by the Commission for any other purpose, collected by any other agency from the affected respondents, or available for public disclosure through 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 collection of information will not have a significant impact on 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.**

A requestor is required to submit documentation in support of a request for a comparability determination only once. If the Commission did not receive information regarding a comparability determination, the Commission could not assess whether the foreign jurisdiction's swap standards are comparable to the relevant Group A and Group B Requirements.

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;**

Not applicable. The documentation in support of a comparability determination would only need to be submitted once.

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

This question does not apply.

- **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 to the Commission or third parties.

- **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(b) expressly requires 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;**

This question does not apply.

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

This question does not apply.

- **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.

- **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 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.**

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).

As part of the rulemaking process, the Proposed Rule was published in the Federal Register at 84 FR [____]__. In the proposing Federal Register release, the Commission seeks public comment on any aspect of the proposed collection of information.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 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.**

This question does not apply. The Commission has neither considered nor made any payment or gift to a respondent.

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. 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 (in Parts 145 and 147 of the Commission’s regulations) to protect the confidentiality of information it receives from applicants or from registrants and other market participants.

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

The regulations covered by this collection do not require the giving of sensitive information, as that term is used in Question 11.

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

- **Indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than ten) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents for the hours burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.**

See Attachment A. The Commission estimates that the collection of information required by the regulations will impose a burden of 200 annual hours on an estimated 5 respondents, which is shown as a new collection of information under OMB Control Number 3038-0072 in row 3 of Attachment A.

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- **The cost estimate should be split into two components; (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major costs factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software, monitoring, sampling, drilling and testing equipment, and record storage facilities.**
- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate, agencies may consult with a sample of respondents (fewer than ten), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

It is expected that respondents 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 requestors to report to the Commission the information required to request a comparability determination under the Proposed Rule.

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

It is not anticipated that the proposed regulations will impose any additional costs to the Federal Government.

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

The regulations associated with this new collection of information request are designed to, consistent with section 2(i) of the CEA, provide for a substituted compliance process for the Group A and Group B Requirements. The collection of information would be a new collection of information under OMB control number 3038-0072 (Registration of Swap Dealers and Major Swap Participants).

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.

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.

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.

Attachment A

**Comparability Determinations for Certain Commission Regulations
(OMB Control No. 3038-0072)**

COLLECTION	ESTIMATED # OF RESPONDENTS OR RECORD KEEPERS PER YEAR	ESTIMATED REPORTS ANNUALLY BY EACH RESPONDENT	ESTIMATED TOTAL ANNUAL RESPONSES	ESTIMATED AVERAGE NUMBER OF HOURS PER RESPONSE	ESTIMATED TOTAL NUMBER OF HOURS OF ANNUAL BURDEN IN FISCAL YEAR
#3038-0072 (1 st IC)	770	1.4	1,112	0.60	667
#3038-0072 (2 nd IC)	2	1	2	2.5	5
#3038-0072 (3rd IC) (Proposed Rule)	5	1	5	40	200