

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0086

Swap Data Repositories: Registration and Regulatory 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.¹ Title VII of the Dodd-Frank Act amends the Commodity Exchange Act (“CEA”)² 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 certain standards for the registration and governance of swap data repositories (“SDRs”), including regulations regarding SDRs reporting data to the Commission and to the public. Accordingly, the CFTC proposed and adopted part 49 of the Commission’s Regulations in 2011.³

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”)⁴ 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. Based in part on these public comments and the Commission staff’s review of these issues, the Commission issued a notice of proposed rulemaking (“Proposal”) on May 13, 2019 to address the Roadmap’s SDR Operations Review goals. The Commission has now finalized that proposed rulemaking. Many information collections discussed in existing Information Collection 3038-0086 would not be impacted by the revisions, and the Commission is not revising the estimated burdens associated with those collections. As explained further below, several information collections discussed in existing Information Collection 3038-0086 are amended by a separate rulemaking, and the Commission is not revising the estimated burdens associated with those collections in this statement.

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

² 7 U.S.C. 1 *et seq.*

³ 17 C.F.R. § 49; *see also* Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011).

⁴ 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.

The modified collections discussed herein will affect SDRs that collect swap data for the Commission to perform its regulatory duties of risk monitoring and ensuring compliance with its rules, among other things. The information sent to the Commission is necessary for the Commission to perform its regulatory mandate of the markets, and SDRs. Without accurate reporting of the data as set forth in the Commission's regulations discussed in this statement, the Commission would be unable to fulfill its regulatory mandate of monitoring systemic risk.

The new or revised information collections affect SDRs that are registered with the Commission or may register with the Commission in the future. The Commission is adding or modifying information collections relating to the following regulations:

- Section 49.3 of the Commission's regulations contains the requirements related to registering with the Commission as an SDR. Final § 49.3(a) removes from § 49.3(a)(5) the requirement for SDRs to file an annual amendment to Form SDR.
- Section 49.5 of the Commission's regulations contains the requirements related to equity interest transfers. Final § 49.5 requires SDRs to file a notification with the Commission for each transaction involving the direct or indirect transfer of ten percent or more of the equity interest in the SDR within ten business days of the firm obligation to transfer the equity interest, to provide the Commission with supporting documentation for the transaction on request, and to file a certification with the Commission that the SDR will meet all of its obligations under the CEA and the Commission's regulations within two business days of completing the equity interest transfer.
- Section 49.6 of the Commission's regulations contains the requirements related to registration of successor entities. Final § 49.6 requires an SDR seeking to transfer its registration to another legal entity due to a corporate change to file a request for approval with the Commission before the anticipated corporate change, including the specific documents and information listed in § 49.6(c).
- Final § 49.9 removes the current text of the section and replaces it with requirements related to SDRs providing open swaps reports to the Commission. Final § 49.9 requires SDRs to provide reports to the Commission with swap data for every open swap maintained by an SDR, as instructed by the Commission, including instructions related to the method, timing, frequency, and format for the open swaps reports.
- Section 49.10 of the Commission's regulations contains requirements related to SDRs accepting data reported to them pursuant to other Commission regulations. Final § 49.10(e) more clearly requires SDRs to accept, process, and disseminate corrections for data errors and omissions.
- Section 49.11 of the Commission's regulations contains the requirements related to SDRs confirming data reported to them pursuant to other Commission regulations. Final § 49.11 updates these requirements to create the SDR side of the new verification requirements. Final § 49.11(b) requires SDRs to provide a mechanism that allows each

reporting counterparty that is a user of the swap data repository to access all swap data maintained by the swap data repository for each open swap for which the reporting counterparty is serving as the reporting counterparty.

- Section 49.26 of the Commission's regulations contains the requirements related to SDRs disclosing information related to the risks and costs associated with using an SDR's services. Final § 49.26(j) creates a new requirement for SDRs to disclose their policies and procedures related to data reporting, including their validation procedures, verification procedures, and data correction procedures.
- Final § 49.28 contains the operating hours requirements for SDRs, including incorporating the operating requirements of § 43.3(f) and (g). This includes the requirement to issue public notices under final § 49.28(a) and (c).
- Final § 49.29 requires each SDR to provide, on request by the Commission, information relating to its business as an SDR and other information that the Commission needs to perform its regulatory duties. Final § 49.29 also requires an SDR, on request from the Commission, to provide written demonstrations of compliance with SDR core principles and other regulatory obligations.

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 data is used by the Commission to assess the governance arrangements, operations, and compliance functions of SDRs, and to ensure that registered SDRs are complying with the core principals enumerated in section 21 of the Act. Additionally, the data collected is used for regulatory purposes by the Commission, and is available to other 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.

SDRs also publicly disseminate data pursuant to part 43 of the Commission's Regulations. The publication of the swap data by a registered SDR is intended to increase transparency in the swaps market for 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 information collections within Information Collection 3038-0086 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 49 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.

- 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.**

This collection of information does not involve any small business or other small entities. The Commission has previously established that the SDRs that would be affected by this collection are not 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 SDRs for compliance with their regulatory obligations and would be unable to effectively monitor the swaps markets.

- 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;**

Final § 49.11 requires the associated collections to be conducted on monthly or quarterly basis, depending on the registration status of the reporting. This frequency is necessary to help ensure that data available to the Commission and the public is accurate and complete. Less frequent collection could hamper the Commission's ability to oversee the swaps markets and perform its regulatory functions, while also allowing more inaccurate data to be provided to the public.

The final amendments to §§ 49.9, 49.10, 49.26, and 49.29 do not specifically require the collection of information more than quarterly, as the required collections are event specific, but the Commission believes that the collections would likely occur more than quarterly in most instances. Providing open swaps reports to the Commission as required by final § 49.9 will improve the Commission's ability to oversee the swaps markets and perform its other regulatory functions. The correction requirements in final § 49.10 will help ensure that correct data is provided to the Commission and to the public. The final requirements of § 49.26 will help prevent reporting errors before they occur, which will improve the accuracy and completeness of data available to the Commission and the public. The final requirements of § 49.29 will help the Commission oversee SDRs.

- **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;**

Most of the final amendments to this Information Collection require a response to the collection in fewer than 30 days after the receipt of a request. Final collections related to final §§ 49.3, 49.5, 49.6, 49.10, 49.11, 49.26, and 49.28 all require information be provided in fewer than 30 days after the triggering event for the collection. The final collections related to final §§ 49.9 and 49.29 do not specifically require a response within 30 days of the triggering event for the collection, but all could require a response within 30 days of the triggering event. For each of these collections, the responses must be within 30 days in order for the Commission to effectively perform its regulatory functions.

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

The final amendments to part 49 do not modify Information Collection 3038-0086 in regards to recordkeeping requirements. Current and final § 49.12 require SDRs to maintain the data they receive for a period of not less than five years after the relevant swap expires, during which time the records must be readily available by the SDR and available to the Commission via real-time electronic access. Thereafter, the swap data must be archived and retrievable by the SDR within 3 business days for an additional ten years. The SDRs are also required to keep non-data records for a period of five years from the creation of the record.

- **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 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 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 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 final 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.

- 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.**

As part of the rulemaking process, the proposed amendments were published in the *Federal Register* at 84 FR 21044 (May 13, 2019). The Commission also announced its Roadmap on July 10, 2017, soliciting comments on the development of these rules. Thus, members of the public, including respondents, have been provided an opportunity to comment on the rule and related matters, including issues and other paperwork burdens. The Commission did not receive any comments on the information collection aspects.

- 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 final 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.

- 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 adjustments to the collections of information discussed in this supporting statement.

In calculating these 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.**

Please see Attachment B for the estimated hour burden related to startup costs and annual maintenance costs for the collections of information discussed in this supporting statement.

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 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 3038-0086.

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 amending Part 49 of the Commission's regulations in order to improve the quality of swap data and to streamline regulatory requirements governing data reporting. This supporting statement discusses adjustments to burden hours calculations for Information Collection 3038-0086 to account for modified and new burdens associated with the changes to the regulation. These amendments, together with the amendments finalized at 85 FR 75503, Nov. 25, 2020, cover all of the regulations under collection 3038-0086.

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 3038-0086

Swap Data Repositories: Registration and Regulatory 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. 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)
49.3(a) – Procedures for Registration	3	2	15	30	\$72.23	\$2,166.90	6	90	\$6,500.70
49.5 – Equity Interest Transfers	3	.33 ⁶	15	5	\$72.23	\$361.15	1	15	\$1,083.45
49.6 – Request for Transfer of Registration	3	.33 ⁷	15	5	\$72.23	\$361.15	1	15	\$1,083.45
49.9 – Open Swaps Reports Provided to the Commission	3	365	2	730	\$72.23	\$52,727.90	1095	2,190	\$158,183.70
49.10(e) – Acceptance of Data	3	3,000,000 ⁸	0.00055	1,650	\$72.23	\$119,179.50	9,000,000	4,950	\$357,538.50

⁵ As described above in the answer to question 13, the Commission calculated the average wage rate to \$72.23.

⁶ Estimate is based on one request every three years.

⁷ Estimate is based on one request every three years.

⁸ This estimate includes the new verification portion of §49.10, which is part of a different rulemaking.

49.11 – Verification of Swap Data Accuracy	3	7,861 ⁹	0.0038	30	\$72.23	\$2,166.90	23,583	90	\$6,500.7
49.26 – Disclosure Requirements for SDRs	3	1	10	10	\$72.23	\$722.30	3	30	\$2,166.90
49.28 – Operating Hours for SDRs	3	3	5	15	\$72.23	\$1,083.45	9	45	\$3,250.35
49.29 – Information Relating to SDR Compliance	3	5	20	100	\$72.23	\$7,223.00	15	300	\$21,669.00

⁹ For SD, MSP, and DCO reporting counterparties, verification must be performed a maximum of 13 times per year. As there are 117 such reporting counterparties, there is a maximum of 1,521 verifications. For all other reporting counterparties, verification must be performed a maximum of 4 times per year. As there are 1,585 such reporting counterparties, there is a maximum of 6,340. The total maximum number of verifications that each SDR must provide information for under § 49.11 is 7,861 (1,521 + 6,340=7,861).

Attachment B

OMB Control Number 3038-0086

Swap Data Repositories: Registration and Regulatory Requirements

Capital/Start-Up Costs

Regulation	Estimated Average Number of Burden Hours per Response	Total Number of Burden Hours	Estimated Average Burden Hour Cost	Total Operational/Maintenance Costs
49.9	250	750	\$72.23	\$54,173
49.10	100	300	\$72.23	\$21,669
49.11	300	900	\$72.23	\$65,007
49.26	20	60	\$72.23	\$4,339

Operational/Maintenance Costs

Regulation	Estimated Average Number of Burden Hours per Response	Total Number of Burden Hours	Estimated Average Burden Hour Cost	Total Operational/Maintenance Costs
49.9	30	90	\$72.23	\$6,501
49.10	30	90	\$72.23	\$6,501
49.11	30	90	\$72.23	\$6,501