

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBERS

3038-0096 (Swap Data Recordkeeping and Reporting Requirements)

3038-0070 (Real-Time Public Reporting)

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 amended the Commodity Exchange Act (“CEA”) to create a regulatory framework for 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.

On November 25, 2020, the Commission published final rules amending regulations in Parts 43 and 45 concerning the correction of swap data errors. Among other things, regulation 45.14 requires swap execution facilities (“SEFs”), designated contract markets (“DCMs”), and reporting counterparties to notify the director of the Commission’s Division of Market Oversight when data errors or omissions in Part 45 cannot be corrected within seven business days of discovery. In such case, regulation 45.14(b) would require the SEF, DCM, or reporting counterparty to notify the director of the Division of Market Oversight within twelve hours of determining it will be unable to timely correct the error, and to provide an “initial assessment of the scope of the error[s]” and an initial remediation plan.² Similarly, regulation 43.3(e) requires notification when data errors or omissions in Part 43 data cannot be corrected within seven business days of discovery.³

In order to facilitate SEFs, DCMs, and reporting counterparties’ submission of error correction notifications pursuant to regulations 45.14 and 43.3(e), the Division of Data (“DOD”) proposes publishing a “Swap Data Error Correction Notification Form” (“Form”) on the Commission’s website, along with instructions for submitting that Form electronically by email. That Form contains fourteen questions that solicit information sufficient to provide an “initial assessment of the scope of the error” and provides a SEF, DCM, or reporting counterparty an opportunity to present an initial remediation plan.

The Commission is proposing to revise Information Collection 3038-0096 and 3038-0070

¹ Dodd-Frank Act, Pub L. No. 111-203, 124 Stat. 1376 (2010)

² 17 C.F.R. § 45.14(a)(1)(ii).

³ 17 C.F.R. § 43.3(e)(1)(ii).

to add the Form as a new Information Collection Instrument for each collection. The Commission is also revising the estimated burdens associated with these collections accordingly.⁴ Commission staff issued the Form pursuant to authority delegated by the Commission to specify the form and manner for notifications for regarding swap data error corrections.⁵ On June 10, 2022, CFTC staff issued a Staff Advisory on Reporting of Errors and Omissions in Previously Reported Data,⁶ which included the Form as an Appendix. CFTC Letter 22-06 announced that the Form should be used for reporting covered data errors beginning on December 5, 2022. The Form specifies the format and manner for submitting information required under regulations 45.14 and 43.3(e).

The proposed modification could affect SEFs, DCMs, swap dealers (“SDs”), major swap participants (“MSPs”), derivatives clearing organizations (“DCOs”), and other non-SD/MSP/DCO reporting counterparties or entities that may become SDs/MSPs/DCOs in the future who will be required to use the Form to comply with the reporting requirements mandated under regulations 45.14 and 43.3(e).

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 information required by CFTC regulations 45.14 and 43.3(e) to ensure data quality, identify errors in data, and ensure compliance with Commission regulations.

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 regulations 45.14 and 43.3(e) require affected parties to notify the Commission if affected parties are unable to timely correct a swap data error. The collection of information is electronic (via email). Obtaining information through electronic means is intended to reduce burdens on affected parties.

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 collection is necessary to obtain information detailing the cause, nature, and scope of swap data errors. Because swap data errors may result from discrepancies between data reported to SDRs and data in the systems of SEFs, DCMs, and reporting counterparties, often only SEFs, DCMs, and reporting counterparties have the ability to identify swap data errors and/or the scope of those errors.

⁴ See Final Rule, Certain Swap Data Repository and Data Reporting Requirements, 85 FR 75601, 75633-634 (Nov. 25, 2020).

⁵ See *id.*

⁶ CFTC Letter 22-06.

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 regulations 45.14 and 43.3(e) include SEFs, DCMs, DCOs, SDs, MSPs, and non-SD/MSP counterparties. SEFs, DCMs, and DCOs are not small entities for purposes of the Regulatory Flexibility Act.⁷ SDs and MSPs are likewise not small entities for the purposes of the Regulatory Flexibility Act.⁸ 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 regulations 43 and 45.

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 hindered. The Commission would have less insight into the cause and scope of swap data errors.

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;

Regulations 45.14 and 43.3(e) do not specifically require the collection of information more than quarterly, as the required collection is event-specific, but the collections could theoretically occur more than quarterly. The Commission, however, believes that the collection will likely occur less than quarterly for each respondent. Based on the Commission's experience with reporting errors and omissions by SEFs, DCMs, and reporting counterparties, errors and omissions that require more than seven business days to correct occur far less often than once a quarter per respondent.

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

Regulations 45.14 and 43.3(e) require information to be provided fewer than 30 days after the triggering event for the collection. This requirement is necessary to ensure that the Commission is aware of potentially large amounts of incorrect or omitted data in order to adjust its regulatory initiatives to compensate and to more efficiently work with SEFs, DCMs, SDRs, and reporting counterparties to have the data corrected as soon as possible.

⁷ See Provisions Common to Registered Entities, 75 Fed. Reg. 67282, 67289 (November 2, 2010); see also 47 Fed. Reg. 18618, 18619 (April 30, 1982) and 66 Fed. Reg. 45604, 45609 (August 29, 2001).

⁸ See Registration of Swap Dealers and Major Swap Participants, 77 Fed. Reg. 2613, 2620 (Jan. 19, 2012), and 75 Fed. Reg. 71379, 71385 (Nov. 23, 2010) (swap dealers and major swap participants).

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

Not applicable, respondents are not required to submit more than an original and two copies of any document.

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

The proposed revision of Information Collections 3038-0096 and 3038-0070 to add a new Information Collection Instrument to facilitate reporting does not modify any recordkeeping requirements associated with these collections.

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

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

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

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

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

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

- 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 regulations 49.16, 49.17, and 49.18, and parts 145 and 147 of the Commission's regulations. Information required to be collected or reported under Information Collections 3038-0096 and 3038-0070 is generally not made public, though it may be shared with other regulators pursuant to Part 49 of the Commission's regulations.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice required by 5 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's notice required by 5 C.F.R. 1320.8(d) appeared in the Federal Register on June 24, 2022, at 87 Fed. Reg. 37839.

The Commission received two relevant comment letters. A SEF proposed that SEFs be permitted to submit the Form through the CFTC Portal rather than by email. A SEF stated that it believes certain notifications related to open swaps that they believe may be required by the Form will be impossible for a SEF to complete because SEFs do not generally possess open swaps information. A SEF also stated that it believed the Commission underestimated the burden hours required by the information collection because, for a SEF, multiple notifications per year may be triggered. Two commenters stated that the timeframe for submitting the Form should be extended, and proposed that the Commission adopt a materiality threshold to trigger the notification requirement. One commenter suggested that certain questions be removed from the Form absent a materiality threshold or longer time-frame.

The majority of the issues raised by these comment letters are not related to the Form that the Commission proposes to add as a new Information Collection Instrument for Collections 3038-0096 and 3038-0070. The reporting requirements which are the primary focus of the comments were adopted as part of regulations 45.14 and 43.3 in November 2020⁹ following public comment in 2019.¹⁰ The Form specifies the format and manner for complying with these reporting requirements, but does not impose new information collection requirements beyond those already codified in the Commission's regulations. With respect to the SEF's statement that SEFs should be permitted to submit Forms through the CFTC Portal rather than by email, staff published the Form to ensure notifications are submitted in a uniform manner, and many market participants lack access to the CFTC Portal. With respect to the SEF's statement that SEFs may be subject to notifications concerning open swaps data to which SEFs do not have access, that SEF misinterprets the Form, which does not require SEFs to review open swaps data. With respect to the SEF's statement that burden hours should be calculated based on submitting multiple notifications per year, the burden hour estimate is based on a determination that, on *average*, the Commission will receive one notification per SEF, DCM, and reporting counterparty per year. This burden hour calculation was previously subject to notice and comment.¹¹ With respect to proposals that the notification timeline be extended or that notifications be subject to a materiality standard, the Commission previously received comments on and considered such proposals.¹² With respect to the proposal that certain questions be removed from the Form, the information sought by those questions concerns the initial scope of the error, which is necessary for staff to assess the impact of the error or errors. The commenter

⁹ See 85 FR at 75633-634.

¹⁰ Notice of Proposed Rulemaking, Certain Swap Data Repository and Data Reporting Requirements, 84 FR 21044 (May 13, 2019).

¹¹ See 85 FR at 75633-634 (Nov. 25, 2020).

¹² See 85 FR at 75628-629.

does not propose revising the Commission’s burden hour assessment in connection with these questions.

Previously, the Commission affirmatively sought comment from the public concerning the existing collections of information required by CFTC regulations 45.14 and 43.3(e). A copy of the solicitation of public comment appeared in the Federal Register on May 13, 2019, at 84 Fed. Reg. 21043.

Comments generally recommended limiting the notification requirement by expanding the time frame to correct errors. Comments also stated that three business days may not be sufficient time to identify the scope of the errors and develop a remediation plan. Other comments recommended including a materiality threshold to the notification requirement, and adopting a principles-based rule that would provide greater flexibility regarding the deadline for correcting errors. Other comments recommended not adopting the three-day deadline and the notification requirement, and instead replacing the notification requirement with a requirement to maintain a log of errors and remediation and only require notification for material errors and only after “due review of the facts and circumstances.” The Commission did not agree with the recommendations to replace or not adopt the notification requirement. The purpose of the notification requirement is to provide the Commission with the information that it needs to assess the accuracy of swap data. The Commission received no comments on the cost and hour burden for regulations 45.14 and 43.3(e) as part of this process.¹³

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 collection that the Commission now proposes to revise.

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.

Not applicable, no collection has been made yet pursuant to regulations 45.14 or 43.3(e).

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

Not applicable. 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.

¹³ See 85 Fed. Reg. 75601, 75632.

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 regulations 43.4, 49.16, 49.17, and 49.18, and Parts 145 and 147 of the Commission's regulations. Information required to be collected or reported under Information Collection 3038-0096 is generally not made public, though it may be shared with other regulators pursuant to Part 49 of the Commission's regulations.

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

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

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

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

CFTC regulations 45.14 and 43.3(e) impose reporting obligations on affected parties. As detailed below, Commission staff estimate that the estimated 1,742 respondents incur a total annual burden of 20,904 hours and an associated total cost of \$1,707,856.80.

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 \$81.70 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 2021) multiplied by 1.3 to account for overhead and other benefits.¹⁴ 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.

Regulation 45.14: Reporting Burdens

Collections required by CFTC regulation 45.14 are event-specific. In previously estimating the hour burden of the information collection, the Commission considered the burden associated with notifying the Director of the Division of Market Oversight of swap data errors, providing an initial assessment of those errors, and providing an initial remediation plan if one exists.¹⁵ The Commission estimated that each SEF, DCM, and reporting counterparty will, on average, need to provide notice to the Commission once per year and that each notice would require 6 burden hours.¹⁶

The Commission does not believe that introduction of the Form alters these previous estimates. The introduction of the Form has no bearing on the Commission’s estimated number of notifications required annually, as that is a function of the rate of occurrence of swap data errors. The introduction of the Form does not alter the Commission’s estimate concerning burden hours, as it only sets out the “form and manner” for notifying the Commission of swap data errors, providing an initial assessment of the scope of those errors, and providing an initial remediation plan if one exists.¹⁷

Regulation 43.3(e): Reporting Burdens

Collections required by CFTC regulation 43.3(e) are similar to those required by regulation 45.14. As was the case when the Commission previously estimated the hour burden

¹⁴ BLS Occupational Employment and Wages Report, https://www.bls.gov/oes/current/naics4_523000.htm (last visited May 4, 2022).

¹⁵ Final Rule, Certain Swap Data Repository and Data Reporting Requirements, 85 Fed. Reg. 75601, 75633 (Nov. 25, 2020).

¹⁶ *Id.*

¹⁷ *See id.*

of the regulation 43.3(e) information collection, the regulation 43.3(e) burden is identical to the regulation 45.14 burden.¹⁸

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 believes that the collection does not impose any additional (*i.e.*, capital and start-up costs, as well as annual operation and maintenance costs) costs on affected entities.

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.

¹⁸ 85 Fed. Reg. at 75651 (“The costs related to final § 43.3(e)(1) are similar to the costs to correct errors under final § 45.14(a)(1), as the final rules to each section are intended to be consistent.”).

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 Collections 3038-0096 and 3038-0070.

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 revising Information Collections 3038-0096 and 3038-0070 to add the Form as a new Information Collection Instrument for each collection. The Commission is also revising the burden estimates for these collections to account for burden associated with the reporting requirements for swap data error correction, which are being implemented by the Form. These reporting requirements were adopted in the Commission's rules adopted in November 2020.¹⁹ The Form specifies the form and manner for providing these required notifications. As described in Attachment A, these revisions result in an incremental increase in burden for both Information Collections 3038-0096 and 3038-0070 of 10,452 burden hours, respectively.

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.

¹⁹ See 85 FR 75601, 75633-634 (Nov. 25, 2020).

Attachment A: Estimated Burden Cost (0096, 0070)

(See Response to Question 12)²⁰

Reporting Burden

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Reports by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number of Burden Hours per Respondent (3 x 4)	6. Estimate of Average Burden Hour Cost ²¹	7. Total Average Hour Burden Cost Per Respondent (5 x 6)	8. Total Annual Responses (2 x 3)	9. Total Annual Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (2 x 7)
45.14	1,742 SEF/DCM/ Reporting counterparty	1	6	6	\$81.70	\$490.20	1,742	10,452	\$853,928.40
43.3(e)	1,742 SEF/DCM/ Reporting counterparty	1	6	6	\$81.70	\$490.20	1,742	10,452	\$853,928.40
Total							3,484	20,904	\$1,707,856.80

²⁰ Numbers in the table are subject to rounding.

²¹ As described above in the answer to question 13, the Commission calculated the average wage rate as \$81.70.