

SUPPORTING STATEMENT FOR REVISED INFORMATION COLLECTION

OMB CONTROL NUMBER 3038-0096

Swap Data Recordkeeping and Reporting 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.**

Section 2(a)(13)(G) of the Commodity Exchange Act (“CEA”) requires that all swaps, whether cleared or uncleared, must be reported to SDRs. CEA section 21(b) directs the Commission to prescribe standards for swap data recordkeeping and reporting, which are to apply to both registered entities and counterparties involved with swaps. The Commission established these regulations in Part 45 of the Commission’s regulations. The regulations establish swap reporting and recordkeeping 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.

On November 25, 2020, the Commission published the final rule amending regulations in Parts 45 concerning swap data recordkeeping and reporting requirements (“Swap Data Reporting Rule”).¹ Regulation 45.7 requires swaps to be identified in all recordkeeping and all swap data reporting by means of a Unique Product Identifier (“UPI”) and product classification system after the Commission designates a UPI and product classification system that satisfies the requirements set forth in the section. As part of that rulemaking, the Commission provided that the burden for the product fields reported in place of UPIs would be accounted for as part of the burden estimates associated with §§ 45.3 and 45.4 until the Commission designated a UPI.²

On February 24, 2023, the Commission issued an order³ designating a UPI and product classification system to be used in swap recordkeeping and data reporting for swaps in the credit, equity, foreign exchange, and interest rate asset classes.⁴

Now that the Commission has designated a UPI and product classification system for certain asset classes, the Commission is revising Information Collection 3038-0096 to take into account the revised burden associated with reporting pursuant to the newly designated UPI and product classification system, in compliance with the Paperwork Reduction Act (“PRA”) and

1

Swap Data Recordkeeping and Reporting Requirements, 85 Fed. Reg. 75503 (Nov. 25, 2020).

² 85 Fed. Reg. at 75548 n.387.

³ *Order Designating the Unique Product Identifier and Product Classification System To Be Used in Recordkeeping and Swap Data Reporting*, 88 Fed. Reg. 11790 (Feb. 24, 2023).

⁴ The Designation Order did not designate a UPI or product classification system for the “other commodity” asset class.

Office of Management and Budget (“OMB”) regulations.⁵ These information collection requirements impact SDRs, SEFs, DCMs, and reporting counterparties that report swap data for the Commission to perform its regulatory duties of risk monitoring and ensuring compliance with its rules, among other items. As part of this update, the Commission is addressing the burden estimates pertaining to information collections for § 45.7.

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 45 require SEFs, DCMs, and reporting counterparties to report swap data to SDRs. The SDRs provide this data to the Commission directly. The Commission uses the data required by CFTC regulation 45 to fulfill its regulatory mandates, including systemic risk mitigation, market monitoring, and market abuse prevention. Specifically, the UPI and product classification system will identify and describe the swap asset class and the sub-type within that asset class to which the swap belongs, and the underlying product for the swap, with sufficient distinctiveness and specificity to: (i) enable the Commission and other regulators to fulfill their regulatory responsibilities, and (ii) assist in real-time public reporting of swap transaction and pricing data pursuant to part 43.

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 information collections covered by OMB Clearance No. 3038-0096 involve the use of electronic collection protocols. All required data submissions to the Commission may be submitted in electronic format.

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 45 of the Commission’s regulations is not already collected by the Commission. The swap data is unique and no other similar transaction-level 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.⁶ In addition, based on its review of publicly available data, the

⁵ See 5 CFR Part 1320

⁶ *Policy Statement and Establishment of “Small Entities” for purposes of the Regulatory Flexibility Act*, 47 FR 18618 (Apr. 30, 1982).

Commission believes that the overwhelming majority of non-SD/MSP/DCO reporting counterparties affected by § 45.7 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 will 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.

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

7. Explain any special circumstances that require the collection to be conducted in a manner:

- **requiring respondents to report information to the agency more often than quarterly;**

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

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

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

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

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;**

This revision will not modify any of the recordkeeping requirements under Clearance 3038-0096. Other Commission regulations, including §§ 1.31, 45.2, and 49.12, require records, including much of the information provided under Clearance 3038-0096, to be kept for at least five years. This retention period is required because swap transactions can continue to exist over substantial periods of time, during which their key economic terms can change. Accordingly, swaps must be monitored by the Commission and other financial regulators throughout their

existence, pursuant to the Dodd-Frank Act.

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

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 pledge of confidentiality that is 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 requirements to submit proprietary or other confidential information in the collection 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 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.**

Following the issuance of the Commission's order⁷ designating a UPI and product classification system to be used in swap recordkeeping and data reporting, the Commission affirmatively sought comment from the public concerning the collection of information required by CFTC regulation 45.7. A copy of the solicitation of public comment appeared in the *Federal Register* at 88 FR 43807 (July 6, 2023). The Commission received no relevant comments that addressed its PRA burden estimates.

⁷ *Order Designating the Unique Product Identifier and Product Classification System To Be Used in Recordkeeping and Swap Data Reporting*, 88 Fed. Reg. 11790 (Feb. 24, 2023).

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.

The Commission does not provide respondents with an assurance of confidentiality beyond that provided by applicable law. All requirements in the collection 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 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.**

See Attachment A. The Information Collection results in the collection of information on swap data reported to SDRs and the Commission by market participants. Specifically, under Regulation 45.7, SDRs, SEFs, DCMs, and reporting counterparties identify any swap in all recordkeeping and swap data reporting by means of a UPI and product classification system.

CFTC regulation 45.7 imposes recordkeeping and reporting obligations on affected parties. As detailed below, Commission staff estimates that 1,732 respondents incur a total annual burden of 1,093 hours and an associated labor cost totaling \$101,992. In calculating the annualized costs to respondents for the hour burdens for the collection of information, 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 \$93.31 using figures from a weighted average of salaries and bonuses across different professional contained in the most recent BLS Occupation Employment and Wages Report (May 2022) multiplied by 1.3 to account for overhead and other benefits. The Commission estimated 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% weight); and "lawyer- industry: securities, commodity contracts, and other financial investment and related activities" (25% weight). Commission staff chose this methodology to account for the variance in skill sets that may be used to accomplish the collection of information. More detail regarding the burden estimates for each regulatory requirement affected by the renewal of Commission's actions is provided below.

Summary

As described in Attachment A, IC 1, the Commission estimates that total overall reporting burden associated with regulation 45.7 are as follows:

- The number of respondents remains 1,732 SEFs, DCMs, DCOs, SDRs, DCMs, and non-reporting counterparties.
- The estimated annual number of responses per respondent will be 63.
- The estimated total annual number of responses will be 109,300.
- The estimated total aggregate burden hours will be 1,093.
- The estimated total annual burden hour cost of all responses will be \$101,992.

In addition, as described in Attachment A, new IC 4, the Commission estimates that regulation 45.7 will create costs for entities required to retrieve and transmit UPIs to update their systems to retrieve and transmit UPIs. The Commission estimates that SDRs, SEFs, DCMs, and reporting counterparties required to retrieve and transmit UPIs will incur a one-time initial burden of one hour per entity to modify their systems to adopt the required changes, for a total estimated hours burden of 1,732 hours. The associated labor cost per entity is estimated to be \$93.31 for a total cost across entities of \$161,620.

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 anticipate any capital and start-up costs or ongoing operation and maintenance costs for SDRs or reporting entities related to this revision. The Commission believes that the operation and maintenance costs related to reporting certain swap data elements and recordkeeping duties are covered in the Item 12 above. To avoid double-counting, the Commission includes the costs associated with generating, maintaining, and disclosing or providing the required information above.

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 this information collection will impose any additional cost on the Federal Government or require additional staff time or technology resources, as discussed in previous filings related to Information Collection 3038-0096.

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

The Commission is revising its burden hours and hourly labor cost estimates following the Commission's designation of a UPI and product classification system for certain asset classes.⁸ The Commission is revising its burden estimates associated with the reporting obligations under Part 45 of the Commission rules to account for new burden associated with the requirements of Part 45.7. These changes result in an incremental increase of 1,093 burden hours for reporting along with \$101,992 in associated labor costs under IC 1: "Swap Data Recordkeeping and Reporting Requirements." These revisions do not impact the estimates for recordkeeping hours under IC 1 "Swap Data Recordkeeping and Reporting Requirements" or any of the burden hour estimates under IC 2 titled "Exemption from Derivatives Clearing Organization Registration" or IC 3 titled "Correcting errors in swap data verification of swap data accuracy (17 CFR 45.14)." In addition, the Commission is adding a new IC titled "Update Systems to Obtain and Transmit UPIs" to reflect the addition of an estimated 1,732 burden hours and an associated \$161,620 in labor costs associated with the work necessary to update update systems to retrieve and transmit UPIs. As a result, this revision results in an overall increase of 2,825 hours annually, yielding a new aggregate burden of 1,463,182 total burden hours for the Collection (as compared to the previously approved total of 1,460,357 burden hours).

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.

⁸ See footnote 4 above.

Attachment A

**OMB Control Number 3038-0096
(Swap Data Reporting and Recordkeeping)**

IC 1: Swap Data Recordkeeping and Reporting Requirements (REVISED)

Reporting Burden (Revised)

1	2	3	4	5	6	7	8	9	10
Regulation	Estimated Number of Respondents	Estimated Number of Reports by Each Respondent	Estimated Average Number of Burden Hours per Response	Annual Number of Burden Hours per Respondent (3 x 4)	Estimated Average Burden Hour Cost	Total Average Hour Burden Cost Per Respondent (5 x 6)	Total Annual Responses (2 x 3)	Total Annual Number of Burden Hours (2 x 5)	Total Annual Burden Hour Cost of All Responses (2 x 7) ⁹
45.3	1,732 SDRs, SEFs, DCMs, Reporting Counterparties	7,000	0.010	70	\$86.90	\$6,082.67	12,124,000	121,240	\$10,535,756
45.4	1,705 SDRs and Reporting Counterparties	97,431	0.0035	341	\$86.90	\$29,632.02	166,119,855	581,419	\$50,525,354
45.5	940 SDRs, SEFs, DCMs, and Financial Entity Reporting Counterparties	18,085	0.010	180.85	\$86.90	\$15,715.01	16,999,900	169,999	\$14,772,913
45.6	1,732 SDRs, SEFs, DCMs, Reporting Counterparties	1	0.020	0.02	\$86.90	\$1.74	1,732	35	\$3,010
NEW IC: 45.7	1,732 SDRs, SEFs, DCMs, Reporting Counterparties	63	0.01	0.63	\$93.31	\$58.89	109,300	1,093	\$101,992
45.10	15 Reporting Counterparties	1	0.010	0.01	\$86.90	\$.87	15	0.15	\$13
45.14	1,732 SDRs, SEFs, DCMs, Reporting Counterparties	52	2	104	\$86.90	\$9,037.11	90,064	180,128	\$15,653,123
45.14(a)	1732 SDRs, SEFs, DCMs, and reporting counterparties	1	6	6	\$86.90	\$521.40	1,732	10,392	\$903,065
45.14(b)	1,732 SDRs, SEFs, DCMs, Reporting Counterparties	12	10	120	\$86.90	\$10,428	20,784	207,840	\$18,061,296
Previous		122,583					195,358,082	1,271,053	\$110,454,530

⁹ Rounded to the nearest dollar.

Reporting Total									
Incremental Increase		+ 63					+ 109,300	+ 1,093	+ \$101,992
New Reporting Total		122,646					195,467,382	1,272,146	\$110,556,522

Recordkeeping Burden (Unchanged)

1	2	3	4	5	6	7	8	9	10
Regulation	Estimated Number of Respondents	Estimated Number of Reports by Each Respondent	Estimated Average Number of Burden Hours per Response	Annual Number of Burden Hours per Respondent (3 x 4)	Estimated Average Burden Hour Cost	Total Average Hour Burden Cost Per Respondent (5 x 6)	Total Annual Responses (2 x 3)	Total Annual Number of Burden Hours (2 x 5)	Total Annual Burden Hour Cost of All Responses (2 x 7)
45.2	1,732 SDRs, SEFs, DCMs, Reporting Counterparties	10,000	0.01	100	\$86.90	\$8,690	17,320,000	173,200	\$15,051,080

New Total Record-keeping and Reporting	1,732 SDRs, SEFs, DCMs, Reporting Counterparties	132,646					212,787,382,082	1,445,346	\$125,607,602
---	--	---------	--	--	--	--	-----------------	------------------	----------------------

IC 2: Exemption from Derivatives Clearing Organization Registration (UNCHANGED)

Reporting Burden

1	2	3	4	5	6	7	8	9	10
Regulation	Estimated Number of Respondents	Estimated Number of Reports by Each Respondent	Estimated Average Number of Burden Hours per Response	Annual Number of Burden Hours per Respondent (3 x 4)	Estimated Average Burden Hour Cost	Total Average Hour Burden Cost Per Respondent (5 x 6)	Total Annual Responses (2 x 3)	Total Annual Number of Burden Hours (2 x 5)	Total Annual Burden Hour Cost of All Responses (2 x 7) ¹⁰
39.6(d)	7 Exempt DCOs	8,074	.1	807.4	86.90	70,159.22	56,518	5,652	\$491,115

IC 3: Correcting Errors in Swap Data Verification of Swap Data Accuracy (UNCHANGED)

Reporting Burden

1	2	3	4	5	6	7	8	9	10
Regulation	Estimated Number of Respondents	Estimated Number of Reports by Each Respondent	Estimated Average Number of Burden Hours per Response	Annual Number of Burden Hours per Respondent (3 x 4)	Estimated Average Burden Hour Cost	Total Average Hour Burden Cost Per Respondent (5 x 6)	Total Annual Responses (2 x 3)	Total Annual Number of Burden Hours (2 x 5)	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

¹⁰ Rounded to the nearest dollar.

New IC 4: Update Systems to Obtain and Transmit UPIs (NEW)

1	2	3	4	5	6	7	8	9	10
Regulation	Estimated Number of Respondents	Estimated Number of Reports by Each Respondent	Estimated Average Number of Burden Hours per Response	Annual Number of Burden Hours per Respondent (3 x 4)	Estimated Average Burden Hour Cost	Total Average Hour Burden Cost Per Respondent (5 x 6)	Total Annual Responses (2 x 3)	Total Annual Number of Burden Hours (2 x 5)	Total Annual Burden Hour Cost of All Responses (2 x 7)
45.7	1,732 SDRs, SEFs, DCMs, Reporting Counterparties	1	1	1	\$93.31	\$93.31	1	1,732	\$161,620